

# **Exhibit Y**

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<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al., ) 5 ) 6 Plaintiffs, ) 7 ) 8 vs. ) Case No. 9 ) 17-04057-CV-C-NKL 10 STATE OF MISSOURI, et al., ) 11 ) 12 Defendants. ) 13 14 VIDEO-RECORDED DEPOSITION OF STEPHEN P. REYNOLDS 15 TAKEN ON BEHALF OF THE PLAINTIFFS 16 DECEMBER 19, 2017 17 18 19 20 (Starting time of the deposition: 1:48 p.m.) 21 22 23 24 25</p>	<p>1 Exhibit 43 10-25-17 Reynolds message to 103 2 various 3 Exhibit 32 Previously marked exhibit 105 4 Exhibit 44 10-31-17 e-mail chain 114 5 Exhibit 45 MSPD improved case flow plan 115 6 Exhibit 6 Previously marked exhibit 120 7 Exhibit 46 11-20-17 McCulloch letter to 128 8 Reynolds 9 10 (The original exhibits were retained by the court 11 reporter to be attached to the original and copies 12 of the transcript.) 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
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<p>1 I N D E X 2 QUESTIONS BY: PAGE 3 MS. ROSCA 8 4 MR. MOORE 156 5 MS. SHIPMA 229 6 MR. MOORE 233 7 8 9 E X H I B I T S 10 EXHIBIT PAGE 11 Exhibit 35 St. Louis Public Radio article 32 12 Exhibit 36 The New York Times article 37 13 Exhibit 4 Previously marked exhibit 40 14 Exhibit 37 Cumulative caseload metrics 41 15 spreadsheet 16 Exhibit 38 FY 2018 Supplemental 46 17 legislative budget request 18 Exhibit 39 10-12-17 Reynolds message to 77 19 Judges Beach and Burton 20 Exhibit 40 10-12-17 Reynolds letter to 78 21 Judges Beach and Burton 22 Exhibit 41 10-14-17 Reynolds letter to 94 23 Barrett 24 Exhibit 42 10-14-17 Reynolds letter to 98 25 Pratzel</p>	<p>1 UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al., ) 5 ) 6 Plaintiffs, ) 7 ) 8 vs. ) Case No. 9 ) 17-04057-CV-C-NKL 10 STATE OF MISSOURI, et al., ) 11 ) 12 Defendants. ) 13 14 VIDEO-RECORDED DEPOSITION OF STEPHEN P. REYNOLDS, 15 produced, sworn and examined on December 19, 2017, 16 between the hours of one o'clock in the afternoon 17 and eight o'clock in the evening of that day, at the 18 ACLU of Missouri Foundation, Suite 1130, 906 Olive 19 Street, St. Louis, Missouri 63101, before William L. 20 DeVries, a Certified Court Reporter (MO), Registered 21 Diplomate Reporter, and Certified Realtime Reporter, 22 in a certain cause now pending in the United States 23 District Court, Western District of Missouri, 24 Central Division, between SHONDEL CHURCH, et al., 25 Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.</p>

1 (Pages 1 to 4)

<p style="text-align: right;">Page 5</p> <p>1 APPEARANCES 2 For the Plaintiffs: 3 Mr. James J. Maune 4 Orrick, Herrington &amp; Sutcliffe LLP 5 2050 Main Street, Suite 1100 6 Irvine, California 92614 7 (949) 491-5616 8 jmaune@orrick.com 9 10 Ms. Camille Joanne Rosca 11 Orrick, Herrington &amp; Sutcliffe LLP 12 51 West 52nd Street 13 New York, New York 10019 14 (212) 506-3750 15 crosca@orrick.com 16 17 For the Public Defender Defendants: 18 19 Ms. Jacqueline Shipma 20 Missouri State Public Defender 21 Woodrill Center 22 1000 West Nifong 23 Building 7, Suite 100 24 Columbia, Missouri 65203 25 (573) 525-5212 jacqueline.shipma@mspd.mo.gov For the State of Missouri and Governor Greitens: Mr. Justin C. Moore State of Missouri Attorney General's Office 815 Olive Street, Suite 200 St. Louis, Missouri 63101 (314) 340-3447 justin.moore@ago.mo.gov</p>	<p style="text-align: right;">Page 7</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by 2 and between counsel for the Plaintiffs and counsel 3 for the Defendants that this deposition may be taken 4 in shorthand by William L. DeVries, RDR/CRR, a 5 Certified Court Reporter and Certified Shorthand 6 Reporter, and afterwards transcribed into 7 typewriting; and the signature of the witness is 8 expressly reserved. 9 * * * * * 10 STEPHEN P. REYNOLDS, 11 of lawful age, produced, sworn and examined on 12 behalf of the Plaintiffs, deposes and says: 13 (Starting time of the deposition: 1:48 p.m.) 14 VIDEOGRAPHER: We are now on the 15 record. Today's date is December the 19th, 2017. 16 The time is approximately 1:48 p.m. This is the 17 video-recorded deposition of Stephen Reynolds in the 18 matter of Church, et al., versus the State of 19 Missouri, et al., Case Number 17-04057-CV-C-NKL, in 20 the United States District Court for the Western 21 District of Missouri. 22 This deposition is being held at the 23 St. Louis ACLU. The reporter's name is Bill 24 DeVries. My name is David Doell, and I'm the legal 25 videographer. We are here with Alaris Litigation</p>
<p style="text-align: right;">Page 6</p> <p>1 Also present: 2 Mr. David Doell, Videographer 3 Alaris Litigation Services 4 711 North Eleventh Street 5 St. Louis, Missouri 63101 6 (314) 644-2191 7 1-800-280-3376 8 9 10 11 12 Court Reporter: 13 William L. DeVries, RDR/CRR 14 Missouri CCR #566 15 Alaris Litigation Services 16 711 North Eleventh Street 17 St. Louis, Missouri 63101 18 (314) 644-2191 19 1-800-280-3376 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 8</p> <p>1 Services. 2 Would the attorneys present please 3 introduce yourselves? 4 MS. ROSCA: Camille Rosca from Orrick, 5 Herrington &amp; Sutcliffe on behalf of the plaintiffs. 6 MR. MAUNE: James Maune for Orrick, 7 Herrington &amp; Sutcliffe on behalf of plaintiffs. 8 MR. MOORE: Justin Moore for the State 9 and Governor Greitens. 10 MS. SHIPMA: Jacqueline Shipma on 11 behalf of MSPD defendants. 12 VIDEOGRAPHER: The court reporter 13 please swear in the witness and we may proceed. 14 COURT REPORTER: Do you swear or affirm 15 that the testimony you are about to give in this 16 proceeding will be the truth, the whole truth, and 17 nothing but the truth? 18 THE WITNESS: Yes. 19 EXAMINATION 20 QUESTIONS BY MS. ROSCA: 21 Q. Good afternoon, Mr. Reynolds. Have you 22 ever been deposed before? 23 A. Yes. 24 Q. Okay. So I -- I assume you understand 25 how the rules work, but I'm just going to give you</p>

2 (Pages 5 to 8)

1 some reminders if that's okay. Could you please  
 2 answer my questions in verbal responses?  
 3 A. Yes.  
 4 Q. And please wait to hear my question and  
 5 then respond so we're not speaking over each other?  
 6 A. Yes.  
 7 Q. And if you don't understand one of my  
 8 questions, just please let me know and I'll be happy  
 9 to rephrase them. And if you need a break, just let  
 10 us know and I'm happy to give you a break. But I  
 11 just ask that we respond to the question -- we not  
 12 take breaks while a question is pending. Do you  
 13 understand that?  
 14 A. Yes.  
 15 Q. Great. What did you do to prepare for  
 16 this deposition?  
 17 A. I met with the public defender legal  
 18 counsel.  
 19 Q. And is that counsel present at this  
 20 table?  
 21 A. Yes.  
 22 Q. And who is that counsel?  
 23 A. Ms. Shipma.  
 24 Q. And was there anyone else present at  
 25 this meeting?

1 A. No.  
 2 Q. Did you review any documents during  
 3 this meeting?  
 4 A. No.  
 5 Q. Did you review any documents in  
 6 preparation for this -- the deposition in general?  
 7 A. After the meeting with Ms. Shipma I  
 8 reviewed some statistics in our computer case  
 9 management system.  
 10 Q. And what statistics were you reviewing?  
 11 A. Caseload numbers, open cases per fiscal  
 12 year.  
 13 Q. And you mentioned you read them on the  
 14 system. Can you explain what that system you're  
 15 referring to is?  
 16 A. It's the Lotus Notes case management  
 17 system that's used in every office.  
 18 Q. Do you have any of those statistics  
 19 with you right now?  
 20 A. I have what I looked at in my head.  
 21 Q. Okay. And did reviewing those  
 22 statistics refresh your recollection about any of  
 23 the issues with respect to this case or this  
 24 deposition?  
 25 A. Yes.

1 Q. And what specifically did it remind you  
 2 of?  
 3 A. The number of cases opened per fiscal  
 4 year.  
 5 Q. And what is that number?  
 6 A. Fiscal '17 I believe was around 4700.  
 7 Q. Is that total for the office?  
 8 A. For the Clayton trial office.  
 9 Q. Could you state your title for the  
 10 record?  
 11 A. I am the district defender of the  
 12 St. Louis County trial office.  
 13 Q. And does the St. Louis County trial  
 14 office have other counties within it?  
 15 A. Not at this time.  
 16 Q. So it's just the St. Louis County?  
 17 A. Correct.  
 18 Q. Okay. Can you provide your employment  
 19 history since you graduated law school?  
 20 A. I graduated law school in 1998 and  
 21 started as an assistant public defender in the city  
 22 of St. Louis in the trial division. In 2004 I left  
 23 the city of St. Louis trial division and was in  
 24 private practice from 2004 to 2007.  
 25 In 2007 I returned to the Missouri

1 public defender in the position of assistant  
 2 district defender in the city of St. Louis. In  
 3 March of 2010 I transferred to St. Louis County  
 4 where I became the district defender of the  
 5 St. Louis County trial office.  
 6 Q. Okay. And when you became a public  
 7 defender in 1998 you said in the city of St. Louis,  
 8 what was your roles -- roles and responsibilities  
 9 coming into the public defenders office?  
 10 A. I was a trial attorney.  
 11 Q. And what would a trial attorney be --  
 12 typically would have to do? What were your  
 13 responsibilities?  
 14 A. Representing clients in criminal  
 15 matters.  
 16 Q. Did you -- did you get assigned certain  
 17 types of cases when you started as a trial attorney?  
 18 A. In my first years I was assigned less  
 19 serious felonies. After two years I believe I was  
 20 assigned all ranges of felonies.  
 21 Q. And then when you moved up -- when you  
 22 came back to the public defenders office in 2007; is  
 23 that correct?  
 24 A. Yes.  
 25 Q. Were you assigned more serious cases

<p style="text-align: right;">Page 13</p> <p>1 then?</p> <p>2 A. I had a small caseload that depending</p> <p>3 upon the needs of the office would either be serious</p> <p>4 felonies or not serious felonies.</p> <p>5 Q. Okay. And then in 2010 that's when you</p> <p>6 became the district defender for the St. Louis</p> <p>7 County office?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And has your roles and</p> <p>10 responsibilities changed since you became district</p> <p>11 defender?</p> <p>12 A. Yes.</p> <p>13 Q. And how have they changed?</p> <p>14 A. I'm now manager of that office.</p> <p>15 Q. And what does that mean? What do you</p> <p>16 manage?</p> <p>17 A. I manage 20 lawyers, three</p> <p>18 investigators, one office management specialist,</p> <p>19 three clerks, and two legal assistants.</p> <p>20 Q. Okay. So you said 20 lawyers, three</p> <p>21 investigators, one office management specialist,</p> <p>22 three clerks, and two legal assistants. Do you have</p> <p>23 any paralegals in your office?</p> <p>24 A. We do not.</p> <p>25 Q. Do you have any other staff in your</p>	<p style="text-align: right;">Page 15</p> <p>1 you and have discussions about their -- their</p> <p>2 caseloads?</p> <p>3 A. Would it be okay to answer as to how</p> <p>4 lawyers are managed in the office and trained?</p> <p>5 Q. Sure.</p> <p>6 A. Is that what you're asking?</p> <p>7 Q. Yes. We'll start with that.</p> <p>8 A. So myself and the assistant district</p> <p>9 defender, we manage the office. And new lawyers,</p> <p>10 both myself and the deputy district defender train</p> <p>11 the lawyers. Certainly in their first six months to</p> <p>12 a year. We're responsible for reviewing all the</p> <p>13 lawyers' work throughout the year and for</p> <p>14 promotions. And there's four step promotions for</p> <p>15 attorneys.</p> <p>16 We handle client complaints, client</p> <p>17 problems with the lawyers. We work with them on</p> <p>18 specific cases. We second chair lawyers. We</p> <p>19 brainstorm with lawyers. We handle hostile</p> <p>20 workplace issues, both within the office and within</p> <p>21 the courthouse.</p> <p>22 Q. Do you have a human resource manager in</p> <p>23 your office that assists with any of that or is it</p> <p>24 just --</p> <p>25 A. We have a state human resource manager.</p>
<p style="text-align: right;">Page 14</p> <p>1 office aside from the ones you've mentioned?</p> <p>2 A. No.</p> <p>3 Q. Okay. Do you personally still have a</p> <p>4 full caseload?</p> <p>5 A. I do not have a full caseload, but I do</p> <p>6 have a caseload.</p> <p>7 Q. And how is the ratio between -- or what</p> <p>8 is the percentage of time dedicated to your caseload</p> <p>9 would you say?</p> <p>10 A. Nearly 50 percent.</p> <p>11 Q. Okay. And is your caseload, does it</p> <p>12 typically include certain kinds of cases or do you</p> <p>13 get the same range of cases as you did prior to</p> <p>14 being district defender?</p> <p>15 A. It largely consists of complicated</p> <p>16 serious felonies and/or mentally ill clients or</p> <p>17 clients who have mental illness and are very</p> <p>18 difficult for lawyers to interact with and manage.</p> <p>19 Q. And then what is the other 50 percent</p> <p>20 of your time dedicated to?</p> <p>21 A. Management.</p> <p>22 Q. How do you supervise your attorneys?</p> <p>23 A. Meaning?</p> <p>24 Q. Meaning do you evaluate them? Is there</p> <p>25 a process by reviewing their work? Do they come to</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Okay. But no one internally?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. And you were saying -- is there</p> <p>4 anything else aside from hostile work environment?</p> <p>5 A. And then the same applies to the</p> <p>6 investigators, the clerk staff, and the legal</p> <p>7 assistants, we train them and manage them.</p> <p>8 Q. Okay. Can we talk about how your</p> <p>9 office is organized? You said you had 20 attorneys.</p> <p>10 A. Yes.</p> <p>11 Q. What -- who is the -- or what is the</p> <p>12 most experienced attorney, what year are they</p> <p>13 essentially? How long have they been in practice?</p> <p>14 A. We have one lawyer who's close to</p> <p>15 having 25 years' experience.</p> <p>16 Q. Okay.</p> <p>17 A. We have two lawyers, including myself,</p> <p>18 who have close to 20. We have another lawyer who</p> <p>19 has between 25 and 30 years' experience. We have</p> <p>20 two or three with ten years' experience. We have</p> <p>21 three to four right around the five-year experience.</p> <p>22 And then everyone else is less than five years.</p> <p>23 Q. So you said one who has 25. That's --</p> <p>24 and then you follow after that. So that's two.</p> <p>25 A. We have two with right around 25. Two</p>

4 (Pages 13 to 16)

1 with right around 20.

2 **Q. Oh, okay. So would you say about**  
3 **ten -- ten of your lawyers have less than ten years'**  
4 **experience?**

5 A. Oh, certainly, yes.

6 **Q. Okay. And how many lawyers have the**  
7 **least amount, like less than a year?**

8 A. Right now I believe we have three  
9 lawyers who have less than a year experience.

10 **Q. And how are the attorneys organized?**  
11 **So do the attorneys with less than a year experience**  
12 **get a certain -- or less -- less serious cases or**  
13 **does everyone get the same batch? How does it work?**

14 A. For your first year if you're a lawyer  
15 in our office, meaning first year of experience as a  
16 criminal defense lawyer, and even if you're a  
17 transfer from another jurisdiction we will -- for  
18 the first six months we give a reduced caseload,  
19 which in our office is around 50 cases, and those  
20 50 cases are low-level nonviolent felonies.

21 We will make some exceptions for some  
22 transfers, but not all. At around a year mark we  
23 will -- just because the number of cases are so  
24 high, the cases -- the number of cases go up to what  
25 everybody else has, which range from a hundred to

1 equipped to handle those kind of cases?

2 A. One.

3 **Q. And do they get funneled to this one**  
4 **attorney?**

5 A. Yes.

6 **Q. Okay. And probation -- probation**  
7 **revocation cases, are they also handled by everyone?**

8 A. Yes.

9 **Q. Are there other cases that I haven't**  
10 **mentioned that are handled by your attorneys**  
11 **generally speaking?**

12 A. It's probation revocations, felonies,  
13 juvenile cases. We have very few misdemeanors.

14 **Q. Okay. You mentioned 100 to 200, your**  
15 **more experienced attorneys' caseload number. Is**  
16 **there attorneys in your office that are actually at**  
17 **the 200 mark?**

18 A. In certainly in November, yes.

19 **Q. Of this year?**

20 A. Yes.

21 **Q. And why was that the case?**

22 A. We distribute cases evenly at the same  
23 rate. The lawyers who had more than 200 cases are  
24 highly experienced lawyers who tend to set more  
25 cases for trial, so their cases move more slowly.

1 200 cases generally speaking.

2 And then for the less experienced  
3 lawyers, right around the year mark we introduce  
4 more serious felonies, and depending upon that  
5 lawyer's ability we slowly add serious felonies to  
6 their caseload.

7 **Q. Does -- so the attorneys with less than**  
8 **a year, would they handle felony cases?**

9 A. Yes.

10 **Q. Would they -- would they work on any**  
11 **trials?**

12 A. Yes.

13 **Q. And -- but they would be nonviolent?**

14 A. Generally speaking.

15 **Q. Okay. And then --**

16 A. With the exception of domestic  
17 violence.

18 **Q. Meaning that they would handle domestic**  
19 **violence cases?**

20 A. They would handle domestic violence.

21 **Q. Okay. And what about juvenile cases,**  
22 **is there someone in your office that's specialized**  
23 **to handle those types of cases?**

24 A. Yes.

25 **Q. And how many attorneys are -- are**

1 Their caseload moves more slowly because of that.

2 **Q. So as the district defender you -- you**  
3 **stated that you have 50 percent of your time to your**  
4 **personal caseload and then you have 50 percent to**  
5 **managing your attorneys. Do you spend other time on**  
6 **other administrative tasks like budget requests, for**  
7 **example?**

8 A. Budgeting is generally done statewide,  
9 and the requests for money that we have for  
10 litigation expenses are all done electronically.  
11 I'm in charge of that, but I -- I sort of wrap that  
12 up into administrative tasks in working with  
13 lawyers. It's a very quick process.

14 **Q. Okay. Do you set any policies for your**  
15 **office in terms of how they should be litigating**  
16 **their cases?**

17 A. We train them to litigate their cases  
18 and we work with people to litigate pretrial motions  
19 and push cases to trial. There's nothing in  
20 writing, though.

21 **Q. Okay. Would you have the discretion,**  
22 **though, as the district defender to set what those**  
23 **policies would be to reach whatever goals your**  
24 **office might have with respect to getting a case to**  
25 **trial?**

<p style="text-align: right;">Page 21</p> <p>1 A. I mean, one could write a policy, but</p> <p>2 whether something goes to trial is so dependent upon</p> <p>3 the specific case and the clients' needs that I</p> <p>4 don't know if a policy would change anything.</p> <p>5 <b>Q. Okay.</b></p> <p>6 A. It's really learning how to work with</p> <p>7 clients and achieve their goals and taking risks</p> <p>8 with clients who want to take risks.</p> <p>9 <b>Q. Okay. Can we talk about the -- you</b></p> <p>10 <b>said you had three investigators in your office?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Okay. And how -- how does the</b></p> <p>13 <b>investigators work with your attorneys, are they --</b></p> <p>14 <b>are they assigned to specific attorneys or do they</b></p> <p>15 <b>work for the office as a whole?</b></p> <p>16 A. They're assigned to specific attorneys.</p> <p>17 <b>Q. And what about the other attorneys that</b></p> <p>18 <b>aren't assigned to an investigator?</b></p> <p>19 A. All attorneys are assigned an</p> <p>20 investigator. So we have three investigators. And</p> <p>21 each investigator works with roughly seven -- six or</p> <p>22 seven lawyers.</p> <p>23 <b>Q. Okay. And does the investigator assist</b></p> <p>24 <b>as soon as an attorney is assigned a case or do they</b></p> <p>25 <b>have to request that kind of assistance from their</b></p>	<p style="text-align: right;">Page 23</p> <p>1 A. Correct.</p> <p>2 <b>Q. Clerks.</b></p> <p>3 A. Two clerks and then one office</p> <p>4 management specialist.</p> <p>5 <b>Q. And -- and how does the work or</b></p> <p>6 <b>assignments to the legal assistants be -- or are</b></p> <p>7 <b>assigned? Are they also for -- you know, one for</b></p> <p>8 <b>every seven or --</b></p> <p>9 A. The legal assistants we use in</p> <p>10 associate court to manage the intake of new clients</p> <p>11 and to organize the associate dockets for the entire</p> <p>12 office. The associate dockets are quite busy and</p> <p>13 logistically complicated, and that's where we get</p> <p>14 most of our new cases.</p> <p>15 So we have two associate divisions, and</p> <p>16 each legal assistant works in one of those divisions</p> <p>17 and manages all the paperwork, client intake, and</p> <p>18 opening up cases for new clients. In addition, the</p> <p>19 legal assistants will play discovery for video</p> <p>20 discovery for clients on occasion when requested by</p> <p>21 lawyers.</p> <p>22 They also are largely in charge of</p> <p>23 ordering and gathering all records, whether they be</p> <p>24 employment records or medical records or school</p> <p>25 records, and we divide the office in half based upon</p>
<p style="text-align: right;">Page 22</p> <p>1 <b>primary investigator?</b></p> <p>2 A. Both. It depends on the working</p> <p>3 relationship. Some lawyers and investigators have a</p> <p>4 working relationship where the investigator</p> <p>5 automatically reads all the police reports and</p> <p>6 discovery for that lawyer's case and then the two</p> <p>7 collaborate. Other lawyers prefer to assign items.</p> <p>8 <b>Q. Okay. So it's not working with them</b></p> <p>9 <b>through the start and finish of a case, but</b></p> <p>10 <b>piecemeal as needed essentially?</b></p> <p>11 A. It depends on the lawyer.</p> <p>12 <b>Q. Okay.</b></p> <p>13 A. But even if it's piecemeal, and I don't</p> <p>14 know if that's the best word, if there's an</p> <p>15 assignment to do something and three months later</p> <p>16 there's another assignment, that investigator is</p> <p>17 sticking with the case and the lawyer.</p> <p>18 <b>Q. Okay. And you said it's one -- one for</b></p> <p>19 <b>every seven?</b></p> <p>20 A. Approximately.</p> <p>21 <b>Q. Okay. And then you said you had five</b></p> <p>22 <b>legal assistants?</b></p> <p>23 A. Two legal assistants.</p> <p>24 <b>Q. Oh, two legal assistants. And three</b></p> <p>25 <b>clerks?</b></p>	<p style="text-align: right;">Page 24</p> <p>1 the associate division. So each legal assistant</p> <p>2 roughly has ten lawyers.</p> <p>3 <b>Q. Would you say that -- you said the</b></p> <p>4 <b>legal assistants manage the intake of new clients</b></p> <p>5 <b>and organizing the docket. Would you say that</b></p> <p>6 <b>that's a daily job?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And then on top of that they also</b></p> <p>9 <b>assist with discovery?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. Has there been a time or an instance</b></p> <p>12 <b>when a legal assistant was too busy to assist an</b></p> <p>13 <b>attorney with discovery requests?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. How often does that occur?</b></p> <p>16 A. It happens I would say with some degree</p> <p>17 of frequency because given the number of cases that</p> <p>18 need to be opened, the incoming clients, that takes</p> <p>19 priority sometimes, and then the -- the records can</p> <p>20 be delayed, ordering the records. So then the</p> <p>21 investigators have to step in and help. Vice versa,</p> <p>22 sometimes the investigators can be out finding</p> <p>23 witnesses and overloaded.</p> <p>24 <b>Q. Uh-huh.</b></p> <p>25 A. And they also play discovery for</p>

6 (Pages 21 to 24)

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www.alaris.us

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1 clients, and then the legal assistants have to step  
2 in.

3 **Q. What do you mean by play discovery for**  
4 **clients? Just not familiar with the term.**

5 A. There is a lot of video discovery now  
6 in criminal cases. It could be video recordings of  
7 witness interviews by the police. It could be 911  
8 calls. It could be videotapes of interrogations.  
9 It could be videos of the crime scene. It could be  
10 surveillance footage.

11 It could be recorded phone calls from  
12 the jail. Some cases may have 50 hours of this  
13 material. And it's impossible for the lawyer to  
14 meet with the client to -- and view all the  
15 discovery together, so we have to break it up and  
16 have assistants help out.

17 **Q. Okay. And then you have the two**  
18 **clerks, and what -- what are their functions and how**  
19 **do they get their assignments?**

20 A. The two clerks manage the -- the phones  
21 up front.

22 **Q. Okay.**

23 A. And they are also opening up cases,  
24 probation revocation cases. They are reviewing  
25 applications that come from the jail and determining

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1 **doing administrative tasks aside from pursuing their**  
2 **-- their individual cases? Like aside from**  
3 **researching cases or going to court, do they send**  
4 **out their letters themselves, do they prepare the**  
5 **templates themselves?**

6 A. Most letters are created and generated  
7 and printed and mailed by the attorneys. We do have  
8 a system where discovery on low-level cases will be  
9 copied by the two clerks and mailed to the clients  
10 automatically as it comes in.

11 Administratively one of the -- the  
12 problems is there's no interface between the court's  
13 computer system of Case.net and our Lotus  
14 management. So all court dates have to be manually  
15 entered to keep up in our system, and most lawyers  
16 fall behind in that administrative task just given  
17 the caseload.

18 **Q. And there's -- is there any time**  
19 **available on the part of the legal assistants or the**  
20 **clerks to take on that role?**

21 A. No.

22 **Q. And being the district defender and**  
23 **managing your attorneys in your office, on average**  
24 **how much time percentage wise do you think your**  
25 **attorneys are spending on administrative work?**

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1 indigency. They are opening up applications that we  
2 get at the circuit arraignment docket.

3 This is when a case moves from  
4 associate court to circuit court. There's a formal  
5 proceeding where the client appears before a judge  
6 and enters a plea of not guilty. We do pick up new  
7 cases at this docket for various reasons.

8 **Q. So are both the clerks and the -- the**  
9 **legal assistants making indigency determinations?**

10 A. Yes.

11 **Q. Okay. And then the office manager,**  
12 **what -- what are their functions?**

13 A. The office manager helps open cases.  
14 She's also in charge of conflicting all cases. She  
15 helps manage the phones. She does all the IT work.  
16 She also fills in for legal assistants and clerks as  
17 needed.

18 **Q. So --**

19 A. And all billing. She also is in charge  
20 of all billing.

21 **Q. So when you say the office manager**  
22 **helps open cases, does that also mean that there's**  
23 **indigency determinations by the office manager?**

24 A. Correct.

25 **Q. So does your attorneys spend any time**

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1 A. I would say if you were to count  
2 checking your voicemail, updating the computer,  
3 meaning you visited a client in the jail, you have  
4 to put notes into the computer, you've been to  
5 court, you have to put notes into the computer, put  
6 in a new court date, I would say it would at least  
7 have to be an hour a day if you were on top of it.

8 **Q. And how many hours does your attorneys**  
9 **generally work in a day?**

10 A. Eight to ten.

11 MR. MOORE: That was eight a.m. to  
12 ten p.m.?

13 THE WITNESS: Eight hours to ten hours.

14 MR. MOORE: Okay.

15 **Q. (By Ms. Rosca) Would you say that your**  
16 **office would benefit from having more administrative**  
17 **staff?**

18 A. It could.

19 **Q. What's your basis for that?**

20 A. I would say more investigation would  
21 help cases move through the system more equitably  
22 and more quickly. And I don't know if there's a  
23 tech solution or if it's a personnel solution to the  
24 administrative tasks would be helpful.

25 **Q. Would your office benefit if they had**

7 (Pages 25 to 28)

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1 more investigators?

2 A. Yes.

3 **Q. And what is your basis for that?**

4 A. More investigation I think would show  
5 earlier what was going on with a case and what needs  
6 to be litigated.

7 **Q. Can you think of an instance -- and I'm**  
8 **not trying to pry into any attorney-client privilege**  
9 **communications. But can you think of an instance, a**  
10 **specific one where a case was hampered because it**  
11 **just didn't have an investigator assistance just**  
12 **because the investigators were not available?**

13 A. That's tough because you learn about it  
14 on the back end. There have been cases -- I can --  
15 there have been cases where lawyers have realized  
16 early on that surveillance video needed to be  
17 obtained quite quickly or certain records needed to  
18 be obtained quite quickly and that resulted in a  
19 better result for the client. I think the fear is  
20 just given the flood of cases that those instances  
21 cannot be seen by a lawyer that's overloaded with  
22 cases.

23 **Q. Is that -- would you say that's true --**  
24 **well, strike that.**

25 **Do you think your office would benefit**

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1 The time to disposition is 79 days,  
2 which is quite short for that large of a caseload.  
3 And so the lawyers are focusing on visiting those  
4 clients, getting them out on bond, perhaps resolving  
5 the case a little bit too quickly.

6 And then what happens with the 30 or 40  
7 violent felonies that the lawyer has, those get  
8 neglected, and those are the cases where there could  
9 be 50 hours of discovery, where the case lingers in  
10 court for nine months before getting set for trial,  
11 which is another nine months off.

12 So it's the serious crimes that get  
13 neglected, the clients don't get visited, discovery  
14 doesn't get reviewed, it doesn't get played. That's  
15 the most serious problem in our office at this time  
16 due to the number of cases.

17 **Q. So just so I understand, the attorneys**  
18 **in your office are trying to move as many cases as**  
19 **they can so they'll focus on the lower-level**  
20 **felonies, and that will take away from the time from**  
21 **the more serious offenses?**

22 A. Partially correct. The flood of the  
23 low level is intense and moves quickly.

24 **Q. Okay.**

25 A. And the demand and the need, it's a

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1 from more legal assistants?

2 A. Yes.

3 **Q. And what is your basis for that?**

4 A. Discovery could be shown to clients  
5 much more quickly and efficiently. I think it would  
6 increase the problems with diligence and  
7 communication that the Hinkebein case has raised for  
8 the whole system. And so I -- I think that would be  
9 very helpful.

10 **Q. You said that discovery would be shown**  
11 **much more quickly. At the going rate right now,**  
12 **when are these discovery videos being shown?**

13 A. I would say after the discovery is  
14 received it can take two to four months for the  
15 discovery to be shown to the client.

16 **Q. And does that impact at all do you**  
17 **think the amount of time that the -- that the case**  
18 **gets resolved?**

19 A. Yes.

20 **Q. And what is your basis for that?**

21 A. I think a lot of the serious violent  
22 felonies -- this is the dynamic in our office is the  
23 C and D and E felonies, those are the low-level  
24 felonies in Missouri. Those are the majority of our  
25 cases.

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1 legitimate need, to have those clients released and  
2 do bond hearings, that's taking up a huge amount of  
3 time and there's no problem with that. But because  
4 that part of the caseload is moving quickly, that's  
5 where the river so to speak is -- where the lawyer  
6 is standing in the river.

7 **Q. Right.**

8 A. The -- the murders, the rapes, the  
9 robberies, the things that are generally going to  
10 move slower tend to move much more slower and get  
11 neglected because the focus is always on the  
12 incoming case.

13 MS. ROSCA: I'm going to hand you what  
14 I think is -- are we on 35?

15 (WHEREIN, Exhibit 35, St. Louis Public  
16 Radio article, was marked for identification by the  
17 Court Reporter.)

18 **Q. (By Ms. Rosca) So the court reporter**  
19 **is going to mark this document Reynolds Exhibit 35.**  
20 **If you could just review that document and let me**  
21 **know when you finish reviewing it. Are you finished**  
22 **reviewing it?**

23 A. Yes.

24 **Q. Have you seen this document before?**

25 A. Yes.

8 (Pages 29 to 32)

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<p style="text-align: right;">Page 33</p> <p>1 Q. Can you state for the record what -- or</p> <p>2 can you describe what this document is?</p> <p>3 A. This appears to be the web version of a</p> <p>4 news story on St. Louis Public Radio from 2012.</p> <p>5 Q. And just for the record, the title of</p> <p>6 the news article is "Missouri public defenders take</p> <p>7 problem of high caseloads to high court."</p> <p>8 A. Yes.</p> <p>9 Q. So if you turn to the second page of</p> <p>10 that printout, do you see where your last name seems</p> <p>11 to appear sort of middle of the page, or your full</p> <p>12 name actually?</p> <p>13 A. Yes.</p> <p>14 Q. Did you provide statements for this</p> <p>15 radio interview?</p> <p>16 A. Yes.</p> <p>17 Q. And do you have any -- do you have any</p> <p>18 concerns about the accuracy of the statements you</p> <p>19 provided in this radio interview.</p> <p>20 A. No.</p> <p>21 (WHEREIN, a discussion was held off the</p> <p>22 record.)</p> <p>23 Q. (By Ms. Rosca) So what was the subject</p> <p>24 matter of this interview?</p> <p>25 A. Caseloads in our office, and at the</p>	<p style="text-align: right;">Page 35</p> <p>1 and just 12 full-time lawyers. Do you see where</p> <p>2 that statement is written?</p> <p>3 A. Yes.</p> <p>4 Q. And since that time you've increased to</p> <p>5 20 attorneys?</p> <p>6 A. I would say 18. I cannot recall if at</p> <p>7 the time the 12 lawyers -- I can tell you the 12</p> <p>8 lawyers did not include myself and Pat Brayer.</p> <p>9 Q. Okay.</p> <p>10 A. It did not include management lawyers</p> <p>11 when I made that statement.</p> <p>12 Q. Does -- does that 18,000 cases strike</p> <p>13 you as a particularly high number?</p> <p>14 A. I believe it's 1800 cases.</p> <p>15 Q. 1800, excuse me.</p> <p>16 A. And I would say it's -- it's a high</p> <p>17 number for 12 lawyers full-time caseload dedicated</p> <p>18 lawyers to handle. Currently our live caseload,</p> <p>19 meaning our pending caseload, is 2,200. So that</p> <p>20 number is not unfamiliar.</p> <p>21 Q. And then later in that same page it</p> <p>22 says one of the attorneys has 118 cases. That</p> <p>23 appears from this article that you were looking at a</p> <p>24 screen that tracks the caseload; is that correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 34</p> <p>1 time there was litigation regarding public defender</p> <p>2 caseloads across the state.</p> <p>3 Q. And you see on the -- again the second</p> <p>4 page of the printout it says that (quote as read):</p> <p>5 Missouri's public defenders have argued</p> <p>6 for years that they have too many</p> <p>7 cases.</p> <p>8 Or it's at the top of the second page,</p> <p>9 I guess. Do you agree with that statement?</p> <p>10 A. Yes.</p> <p>11 Q. And what's your basis for that</p> <p>12 agreement?</p> <p>13 A. To my knowledge, since 2007 caseload</p> <p>14 numbers have been a high priority of the public</p> <p>15 defender system, and there's been numerous efforts</p> <p>16 in the legislature and the courts to reduce those</p> <p>17 numbers.</p> <p>18 Q. And does that caseload issue -- has</p> <p>19 that caseload issue also affected your office in</p> <p>20 particular?</p> <p>21 A. Yes.</p> <p>22 Q. And it says if you look further down</p> <p>23 that St. Louis County is the biggest county in</p> <p>24 Missouri, and at that time it said that the public</p> <p>25 defenders office has more than 18,000 cases pending</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And you testified earlier that your</p> <p>2 more experienced attorneys have about 100 to</p> <p>3 200 cases per attorney; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. So would you agree that your caseload</p> <p>6 per attorney at least for the experienced ones have</p> <p>7 increased since this article was written or this</p> <p>8 interview was taken?</p> <p>9 A. It very well could have. Because this</p> <p>10 article only references one lawyer with 118 cases, I</p> <p>11 don't recall what the numbers were for the other 11</p> <p>12 lawyers at that time. I can tell you right now just</p> <p>13 every one but two full-time dedicated lawyers has</p> <p>14 over a hundred cases in our office right now.</p> <p>15 Q. And does that figure strike you as</p> <p>16 particularly high?</p> <p>17 A. Yes.</p> <p>18 Q. And what is your basis for that</p> <p>19 opinion?</p> <p>20 A. I think once cases go above 60, I think</p> <p>21 it's incredibly difficult for even the most trained</p> <p>22 lawyer to maintain communication and diligence on a</p> <p>23 caseload over 60.</p> <p>24 MS. ROSCA: Okay. And the article also</p> <p>25 says that -- I will introduce another exhibit. So</p>

9 (Pages 33 to 36)

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<p style="text-align: right;">Page 37</p> <p>1 the court reporter is going to mark this Exhibit 36, 2 Reynolds Exhibit 36. 3 (WHEREIN, Exhibit 36, The New York 4 Times article, was marked for identification by the 5 Court Reporter.) 6 <b>Q. (By Ms. Rosca) Could you please review</b> 7 <b>this document and let me know when you've finished</b> 8 <b>reviewing it?</b> 9 A. Yes. 10 <b>Q. Have you seen this document before?</b> 11 A. Yes. 12 <b>Q. And can you state for the record or</b> 13 <b>describe what the document is?</b> 14 A. This is a computer printout of a 15 article from February 19th of 2014 that was 16 published in The New York Times about public 17 defender caseloads. 18 <b>Q. And just for the record, the article is</b> 19 <b>titled "Public Defenders, Bolstered by a Work</b> 20 <b>Analysis and Rulings, Push Back Against a Tide of</b> 21 <b>Cases?"</b> 22 A. Correct. 23 <b>Q. If you turn to the second page of the</b> 24 <b>printout, it's the backside of the first page</b> 25 <b>towards the bottom, do you see your name stated</b></p>	<p style="text-align: right;">Page 39</p> <p>1 cause. In 2012 and 2013 the prosecutor's office 2 switched the head of the warrants office and there 3 were more filings, and those filings increased our 4 numbers where across the board nearly every lawyer 5 in our office had 200 or more. And then that number 6 dropped, but as recently as this summer we had 7 several lawyers over -- we had two lawyers over 200 8 and several approaching 200. 9 <b>Q. And just to be clear, the Exhibits 35</b> 10 <b>and 36, they -- they both reference a ruling. Do</b> 11 <b>you know what -- what was happening at the time the</b> 12 <b>Supreme Court case that they're describing in both</b> 13 <b>articles, do you know what that's in reference to?</b> 14 <b>You can also look at Exhibit 35. That would help</b> 15 <b>too.</b> 16 A. I don't remember the -- the style of 17 the case, but it was the case that was being 18 litigated in the Missouri Supreme Court about 19 whether public defenders could manage their caseload 20 numbers. 21 <b>Q. Was it the Waters decision, would</b> 22 <b>that --</b> 23 A. Yes. 24 <b>Q. Okay. And just back to Exhibit 36, you</b> 25 <b>also state right under the comment that we just read</b></p>
<p style="text-align: right;">Page 38</p> <p>1 there? 2 A. Yes. 3 <b>Q. Did you provide comments for this</b> 4 <b>article?</b> 5 A. Yes. 6 <b>Q. And do you have any concerns or doubt</b> 7 <b>as to the accuracy of those comments?</b> 8 A. No. 9 <b>Q. You state in the article that, quote</b> 10 <b>(quote as read):</b> 11 <b>Until recently lawyers here were</b> 12 <b>carrying more than 200 felony cases</b> 13 <b>from drugs to rape and murder.</b> 14 <b>Do you see that?</b> 15 A. Yes. 16 <b>Q. Is that -- was that true for your</b> 17 <b>office just before 2014?</b> 18 A. Yes. 19 <b>Q. Has that number continued this year?</b> 20 A. Not to the extent -- still a problem, 21 but it's not as intense as it was shortly before 22 this article was written. 23 <b>Q. And what was the reason for I guess the</b> 24 <b>reduction in intensity of cases?</b> 25 A. It's -- I don't know if I can give a</p>	<p style="text-align: right;">Page 40</p> <p>1 <b>that the burden has eased, but it's still more than</b> 2 <b>we can probably -- properly handle. Do you still</b> 3 <b>agree with that statement?</b> 4 A. Yes. 5 <b>Q. And what do you mean by what your</b> 6 <b>office can properly handle?</b> 7 A. Communication, diligence, litigating 8 cases, all of those three areas, particularly 9 communication and diligence our lawyers struggle 10 with, and do not make reasonable -- I guess they do 11 not meet reasonable standards. 12 <b>Q. Are you -- when you say reasonable</b> 13 <b>standards, are you referring to ethical standards?</b> 14 A. Yes. 15 <b>Q. And the term communications, diligence</b> 16 <b>are -- is that a term of art that you're</b> 17 <b>referencing?</b> 18 A. I believe those are terms also used in 19 the ethical rules. 20 MS. ROSCA: I am going to introduce -- 21 this one exhibit has been previously marked, so this 22 is Plaintiffs' Exhibit 4. 23 (Exhibit 4, Previously marked exhibit.) 24 MS. ROSCA: And then with that I am 25 also going to introduce Reynolds Exhibit 37.</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 (WHEREIN, Exhibit 37, Cumulative 2 caseload metrics spreadsheet, was marked for 3 identification by the Court Reporter.) 4 <b>Q. (By Ms. Rosca) Have you seen these</b> 5 <b>documents before? I know one is hard to read. I</b> 6 <b>apologize.</b> 7 A. I do not believe I've seen 4. And I do 8 not believe I have seen 37 either. 9 <b>Q. Okay. So I'll represent to you that</b> 10 <b>these documents were produced by the public</b> 11 <b>defenders office to our office, and they list</b> 12 <b>cumulative caseload metrics. And if you look at row</b> 13 <b>21 or area 21 it lists the St. Louis County. Do you</b> 14 <b>see that?</b> 15 A. Yes. 16 MR. MOORE: I'll also object to the 17 form of the question as it's leading and 18 argumentative as to what the exhibits show, but 19 subject to that you can continue. 20 <b>Q. (By Ms. Rosca) Mr. Reynolds, could you</b> 21 <b>just describe for the record what you see on these</b> 22 <b>exhibits, what you think these documents are?</b> 23 A. My understanding of these documents, 24 and I've seen these doc -- not these specific 25 documents, but iterations of statistics in the past</p>	<p style="text-align: right;">Page 43</p> <p>1 A. Correct. 2 <b>Q. Okay. And do you have any</b> 3 <b>understanding of what these columns mean?</b> 4 A. Yes. 5 <b>Q. Okay. So for example, the column that</b> 6 <b>says net new cases, what -- what does that -- what</b> 7 <b>is your understanding of what that column is</b> 8 <b>displaying?</b> 9 A. The number of cases that were opened in 10 that quarter minus cases that we withdrew from. 11 <b>Q. Okay. And then do you see that that</b> 12 <b>figure for Plaintiffs' Exhibit 4 says 1,118?</b> 13 A. Yes. 14 <b>Q. Okay. And then if you look at the</b> 15 <b>column that says workload, it's sort of the last --</b> 16 <b>fourth -- fourth to the last?</b> 17 A. Workload units plus count time plus 18 travel? 19 <b>Q. Yes. Do you have an understanding of</b> 20 <b>what the information in that column is conveying?</b> 21 A. Yes. 22 <b>Q. And do you see that it says 27,352?</b> 23 A. Yes. 24 <b>Q. Okay. Just going back to the net new</b> 25 <b>cases, the 1118, does that seem accurate to you for</b></p>
<p style="text-align: right;">Page 42</p> <p>1 because they were distributed to district defenders 2 as they were produced, these -- this shows caseload 3 metrics for each office. 4 <b>Q. And just looking at Plaintiffs' Exhibit</b> 5 <b>4, can you see is there any date on this document?</b> 6 A. It appears to be January 1, 2017 to 7 March 31st of 2017. 8 <b>Q. And you mentioned that you've seen</b> 9 <b>iterations of these documents before. Have you seen</b> 10 <b>any prior metrics from prior time periods?</b> 11 A. Yes. The last time that I -- I saw 12 documents similar to these would be probably 2014, 13 somewhere around there I believe they stopped being 14 distributed to the district defenders unless you 15 specifically requested it. 16 <b>Q. All right. Is there a reason why you</b> 17 <b>wouldn't request sort of the caseload metrics for</b> 18 <b>your -- for your office?</b> 19 A. Nothing's changed. I mean, you can 20 tell just by the number of cases that come into our 21 office that the metrics would not be changing much. 22 <b>Q. Okay. So let's look -- let's start</b> 23 <b>with Plaintiffs' Exhibit 4. So it says you have 20</b> 24 <b>attorneys. Is that -- that's still accurate,</b> 25 <b>correct?</b></p>	<p style="text-align: right;">Page 44</p> <p>1 <b>the first three months of this year?</b> 2 A. Yes. 3 <b>Q. And for the -- do you see the column</b> 4 <b>that says percent of capacity?</b> 5 A. Yes. 6 <b>Q. And what is your understanding of that</b> 7 <b>column?</b> 8 A. Based upon the number of lawyers and 9 the formula devised by RubinBrown, there's an hour 10 capacity assigned to an office, and then based upon 11 the cases that come in there's an hour number 12 assigned to those cases, and then they come up with 13 a percentage which shows how much over or under the 14 target is for lawyers and work hours for the given 15 caseload in an office. 16 <b>Q. And do you see that the percentage for</b> 17 <b>the Plaintiffs' Exhibit 4 is 263 percent?</b> 18 A. Yes. 19 <b>Q. Would you agree or do you think that's</b> 20 <b>an accurate portrayal of how much capacity your</b> 21 <b>office has to take on cases?</b> 22 MR. MOORE: Also object to the 23 foundation, but subject to that you can respond. 24 A. Yes. 25 <b>Q. (By Ms. Rosca) If we now move to -- is</b></p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 it Exhibit 37?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. To Reynolds Exhibit 37. Is</p> <p>4 there a date for this document?</p> <p>5 A. April 1, 2017 to June 30th, 2017.</p> <p>6 Q. And would you agree that the columns</p> <p>7 that you described earlier are the same with respect</p> <p>8 to meaning for this document?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see if we go to net new</p> <p>11 cases, which we discussed in the prior exhibit, that</p> <p>12 the number is 1,062?</p> <p>13 A. Yes.</p> <p>14 Q. And that the workload is 25,866?</p> <p>15 A. Yes.</p> <p>16 Q. So do you -- and also the percent of</p> <p>17 capacity is 240 -- 240.7 percent. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have an understanding as to why</p> <p>20 the percent of capacity and the net new cases has</p> <p>21 decreased within just the six-month time period?</p> <p>22 A. No.</p> <p>23 Q. Do you still think that that's -- do</p> <p>24 these figures still strike you as -- as high in</p> <p>25 terms of workload capacity?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Yes.</p> <p>2 Q. In what ways have you seen it?</p> <p>3 A. In the same way that I described for 37</p> <p>4 and 4.</p> <p>5 Q. Okay. You can look at page seven of</p> <p>6 this document or this exhibit. It says St. Louis</p> <p>7 County. Again, area 21.</p> <p>8 A. Yes.</p> <p>9 Q. Can you describe what you think this</p> <p>10 spreadsheet is providing in terms of information?</p> <p>11 A. I take back my answer. I have seen</p> <p>12 this document for the fiscal year 2017.</p> <p>13 Q. And in what instance have you seen it?</p> <p>14 A. I saw it in anticipation of this</p> <p>15 deposition.</p> <p>16 Q. Okay. And what -- what is this</p> <p>17 spreadsheet providing in terms of information?</p> <p>18 A. It's the cumulative caseload metrics</p> <p>19 for fiscal year 2017.</p> <p>20 Q. And do you see -- strike that.</p> <p>21 Are the columns that are listed here</p> <p>22 similar to the columns that you were seeing in</p> <p>23 Exhibits 37 and Plaintiffs' Exhibit 4?</p> <p>24 A. Yes.</p> <p>25 Q. Would you agree that the columns have</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 Q. And what is your basis for that?</p> <p>3 A. I think any reasonable and experienced</p> <p>4 attorney would not be able to handle the number of</p> <p>5 cases that came into our office during that period</p> <p>6 as divided among the staff that we have.</p> <p>7 MS. ROSCA: Okay. And I'm going to</p> <p>8 introduce another -- actually, it's previously been</p> <p>9 introduced.</p> <p>10 MR. MOORE: So that was Plaintiffs' 4</p> <p>11 and Reynolds Exhibit 37, right?</p> <p>12 MS. ROSCA: I'm going to introduce one</p> <p>13 more and then we can take a break. The court</p> <p>14 reporter is marking what is Reynolds Exhibit 38, and</p> <p>15 it starts with Bates number MSPD0038970.</p> <p>16 (WHEREIN, Exhibit 38, FY 2018</p> <p>17 Supplemental legislative budget request, was marked</p> <p>18 for identification by the Court Reporter.)</p> <p>19 Q. (By Ms. Rosca) Could you review the</p> <p>20 document and let me know when you've reviewed it?</p> <p>21 I'm going to really only ask you about the last</p> <p>22 page, so -- have you seen this document before?</p> <p>23 A. No.</p> <p>24 Q. If we turn to the last page, have you</p> <p>25 seen iterations of this spreadsheet before?</p>	<p style="text-align: right;">Page 48</p> <p>1 the same meaning as in those exhibits?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So for net new cases it says</p> <p>4 4,372.</p> <p>5 A. Yes.</p> <p>6 Q. Do you understand that to mean -- sorry</p> <p>7 for speaking over you. Do you understand that to</p> <p>8 mean that there's four hundred -- 4,372 cases for</p> <p>9 that fiscal year that were new?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then it says that you still</p> <p>12 had 20 attorneys?</p> <p>13 A. Yes.</p> <p>14 Q. So just by dividing that total number</p> <p>15 by the 20 attorneys, that's about 218.6 cases per</p> <p>16 attorney?</p> <p>17 A. I will accept that calculation.</p> <p>18 Q. Would you -- does that strike you as</p> <p>19 high to have over 200 cases per one attorney in a</p> <p>20 given year?</p> <p>21 A. Yes.</p> <p>22 Q. And what's your basis for thinking</p> <p>23 that's a high number?</p> <p>24 A. They're all felonies. Many of those</p> <p>25 felonies are violent felonies. And I think it's</p>

12 (Pages 45 to 48)

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1 unusual for lawyers to have that many cases in one  
2 year, and then when you consider the number of  
3 violent felonies, I think it's extremely unusual.  
4 And I can't think of anybody in private practice who  
5 would handle that number of cases and particularly  
6 the seriousness of those cases.

7 **Q. You said they're particularly violent**  
8 **cases. In your experience as a district defender**  
9 **and a public defender, do violent cases take up more**  
10 **time?**

11 A. Yes.

12 **Q. And why is that?**

13 A. They're more complicated. The stakes  
14 are higher. There's more witnesses. There's more  
15 discovery. Often there's more issues with mental  
16 health. There's more client communication needed.  
17 There's more investigation needed. There's more  
18 depositions needed. There's more discovery review  
19 needed.

20 **Q. So by that answer do you also think**  
21 **that violent cases require more resources?**

22 A. Correct.

23 **Q. At the moment right now at your office,**  
24 **is it your opinion that your office is getting the**  
25 **-- the sufficient amount of resources it needs to be**

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1 Would you like me to list them?

2 **Q. Please.**

3 A. We get cases through the associate  
4 division when people are first arrested on a case.  
5 We will get cases where clients in the Department of  
6 Correction mail in applications because there's  
7 outstanding warrants.

8 We get cases of what's called the  
9 circuit arraignment docket, which is where a case is  
10 transferred from associate to circuit court. We get  
11 walk-ins, people who have been released and are  
12 looking for a lawyer.

13 We get applications from the jail  
14 across the board, any type of case and wherever it  
15 is in the system. We get referrals from the court,  
16 meaning clients have shown up in court without a  
17 lawyer.

18 We get e-mails from family members  
19 looking to get a lawyer for a family member. We get  
20 telephone calls from potential clients or family  
21 members looking for a lawyer. That would be the  
22 basic overview. There may be other instances, but  
23 that pretty much covers it.

24 **Q. So when a case comes to you through any**  
25 **of those avenues that you just listed, what happens**

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1 **able to litigate a case to the ethical standards**  
2 **that are required?**

3 MR. MOORE: I'll just -- sorry. Just  
4 object to the form. I think it's vague. Subject to  
5 that, you can respond.

6 A. No.

7 **Q. (By Ms. Rosca) And why -- what is your**  
8 **basis for your opinion on that?**

9 A. Our office needs five to ten more  
10 lawyers at least to ethically handle the cases that  
11 come into our office each year.

12 MS. ROSCA: Have you -- strike that.

13 We have been going I think for over an hour. Would  
14 you like to take a break?

15 THE WITNESS: Sure.

16 MS. ROSCA: Okay. Off the record.

17 VIDEOGRAPHER: The time is 2:46. We  
18 are off the record.

19 (WHEREIN, a recess was taken.)

20 VIDEOGRAPHER: The time is 2:51. We  
21 are back on the record.

22 **Q. (By Ms. Rosca) Hi, Mr. Reynolds. Can**  
23 **we talk about case assignment? Can you walk through**  
24 **how your office gets a case?**

25 A. We get cases in a variety of ways.

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1 **next? Is there a determination as to whether you're**  
2 **going to take the case?**

3 A. Once we get an application. And how we  
4 get an application is going to vary based upon all  
5 those different ways we take in cases.

6 **Q. And so can we start with maybe through**  
7 **the associate division as an example when a**  
8 **defendant is just arrested you mentioned; is that**  
9 **correct?**

10 A. Correct.

11 **Q. Okay. So how -- can you walk me**  
12 **through essentially how that case that you received**  
13 **from the associate division then gets assigned to an**  
14 **attorney in your office?**

15 A. So in the associate division there's  
16 what's called a confined docket each morning, and  
17 those are defendants who have been arrested anywhere  
18 24 to 72 hours prior to that court date. The judge  
19 does a -- what's called an initial arraignment where  
20 he informs the defendant of the charges and inquires  
21 how the defendant is going to acquire an attorney.

22 If the defendant requests a public  
23 defender or indicates that they have no resources to  
24 hire a private attorney, an application is filled  
25 out in court and given to our legal assistants who

13 (Pages 49 to 52)

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1 review the application in court or after court and  
2 make an indigency determination.

3 **Q. And then once this indigency**  
4 **determination is made, what happens next?**

5 A. A case is created in our computer  
6 system and at the same time it's assigned to an  
7 attorney.

8 **Q. And who makes the determination as to**  
9 **which attorney gets that assignment?**

10 A. The legal assistant.

11 **Q. Does the legal assistant have any**  
12 **information as to -- or strike that.**

13 Does the legal assistant consider the  
14 attorney's caseload at all when it gives the  
15 assignment of a case?

16 A. Yes. So we have a spreadsheet that we  
17 use for assigning all cases in the office and  
18 assignments are largely made by scheduling  
19 availability so we can achieve vertical  
20 representation. So that's one major factor in the  
21 case assignments. The other major factor is the  
22 attorney's experience level.

23 **Q. Okay. And the more experienced**  
24 **attorneys would get the more serious cases. Is that**  
25 **how it works?**

1 A. No. I meant is it because the case is  
2 too difficult for the lawyer or the lawyer's  
3 caseload is too high and the lawyer can't have a new  
4 case?

5 **Q. The -- the latter.**

6 A. We have not encountered that as an  
7 office, although all lawyers know that they're  
8 overloaded. And we are working with the courts to  
9 try to resolve that, but as of yet no lawyer has  
10 said no more cases.

11 **Q. What about in the prior situation where**  
12 **they just don't have the experience to take on that**  
13 **particular case?**

14 A. We'd reassign it.

15 **Q. Can we talk a little bit about initial**  
16 **hearings? At what point -- can you describe what**  
17 **happens after the indigent defendant is arrested?**  
18 **Do they get an initial hearing? You mentioned**  
19 **before that they can request the PD after they get**  
20 **arrested, but after that point if they're not**  
21 **assigned a PD is there an initial hearing?**

22 A. Initial hearing is not a term that's  
23 really used --

24 **Q. Okay.**

25 A. -- in our jurisdiction.

1 A. Correct. And we make categorical  
2 determinations on the difficulty of the case and the  
3 lawyer's experience level so that the legal  
4 assistant can assign the case according to those  
5 parameters.

6 **Q. Okay. Is there ever an instance where**  
7 **a case was assigned to an attorney in your office by**  
8 **a legal assistant after making an indigency**  
9 **determination where the attorney said he can't**  
10 **handle the case?**

11 A. No.

12 **Q. If there was a situation that that**  
13 **would occur, what would the attorney's recourse**  
14 **would be? Could he talk to someone about that?**

15 A. Oh, it would be quite easy. If a  
16 lawyer cannot handle a particular case or certainly  
17 in this post-Hinkebein landscape if an attorney said  
18 there are too many cases, they would talk to me and  
19 we would figure out a resolution.

20 **Q. And what would happen to that case if**  
21 **the resolution was this particular attorney cannot**  
22 **handle that case?**

23 A. In what capacity?

24 **Q. Like internally, would it go to another**  
25 **attorney?**

1 **Q. What would you -- how would you**  
2 **describe the process? What terms would you use?**

3 A. Can I describe the process?

4 **Q. Sure.**

5 A. So the confine docket is the arrested  
6 person's first appearance in court where charges are  
7 read. The case is then continued by the court for  
8 one or two weeks for entry of counsel.

9 If we enter on the case generally  
10 speaking, particularly for low-level felonies, the  
11 case is given two court dates. One for preliminary  
12 hearing and one for a bond hearing.

13 The bond hearing is generally within a  
14 week of that second appearance in court and then the  
15 preliminary hearing is scheduled by the court and is  
16 usually six weeks out.

17 **Q. Has there been an instance where the PD**  
18 **has been unable to enter as counsel after those**  
19 **first two weeks after being arrested?**

20 A. I'm not understanding the question.

21 **Q. Let me rephrase. That was vague. You**  
22 **mentioned that after they are arrested and appear**  
23 **for the first time there's one to two weeks in which**  
24 **the -- your office may enter as counsel; is that**  
25 **correct?**



<p style="text-align: right;">Page 57</p> <p>1 A. Yes.</p> <p>2 <b>Q. Okay. Has there been a situation where</b></p> <p>3 <b>your office was unable to have an attorney present</b></p> <p>4 <b>to enter as counsel?</b></p> <p>5 A. No.</p> <p>6 <b>Q. Okay. After you've entered as counsel</b></p> <p>7 <b>for a particular case, you stated that there are two</b></p> <p>8 <b>other court dates that are usually set, the</b></p> <p>9 <b>preliminary hearing and the bond hearing?</b></p> <p>10 A. Correct.</p> <p>11 <b>Q. Has there been a situation where an</b></p> <p>12 <b>attorney in your office has been unable to attend</b></p> <p>13 <b>either of those hearings?</b></p> <p>14 A. No.</p> <p>15 <b>Q. Okay. Has the -- do the attorneys in</b></p> <p>16 <b>your office typically meet with their client prior</b></p> <p>17 <b>to these hearings?</b></p> <p>18 A. As much as possible.</p> <p>19 <b>Q. And what does as much as possible mean?</b></p> <p>20 A. Given the number of cases that come in,</p> <p>21 many attorneys find it difficult to have an initial</p> <p>22 visit within statewide public defender standards of</p> <p>23 seven days. Because of the number of cases and the</p> <p>24 -- the flow of those cases are so quick, we expanded</p> <p>25 our initial visit to ten business days for our</p>	<p style="text-align: right;">Page 59</p> <p>1 <b>Q. Okay. Do you -- is there a trend as to</b></p> <p>2 <b>the lawyers missing it being less experienced</b></p> <p>3 <b>attorneys?</b></p> <p>4 A. No.</p> <p>5 <b>Q. Okay. So you're saying even the more</b></p> <p>6 <b>experienced attorneys may be missing the six-week</b></p> <p>7 <b>client contact?</b></p> <p>8 A. In our office it would be counted as</p> <p>9 have you seen the client within the first ten days.</p> <p>10 <b>Q. Okay.</b></p> <p>11 A. And then we've deviated from every</p> <p>12 30 days, which is the statewide standard, to every</p> <p>13 60 days just given the speed of cases and the number</p> <p>14 of cases, and there are lawyers who miss both of</p> <p>15 those marks. There are some lawyers who meet their</p> <p>16 clients within seven days and then every 30 days</p> <p>17 also.</p> <p>18 <b>Q. For the instances where they have</b></p> <p>19 <b>missed the mark on the 30 days or the 60 days, in</b></p> <p>20 <b>your opinion do you think that it -- that it impacts</b></p> <p>21 <b>the relationship with the client?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And what is your basis for that</b></p> <p>24 <b>conclusion?</b></p> <p>25 A. The 60-day mark is usually being missed</p>
<p style="text-align: right;">Page 58</p> <p>1 office. As much as possible the lawyers try to</p> <p>2 achieve that, but it doesn't happen in every case.</p> <p>3 <b>Q. So -- go ahead.</b></p> <p>4 A. And just to finish, before the</p> <p>5 preliminary hearing which is usually six weeks after</p> <p>6 we've entered, most lawyers have met with their</p> <p>7 confined clients, but there are exceptions given the</p> <p>8 caseload where that does not occur.</p> <p>9 <b>Q. So there's a possibility then that a</b></p> <p>10 <b>client would be confined for at least six weeks and</b></p> <p>11 <b>have not met with their counsel yet?</b></p> <p>12 A. It has happened.</p> <p>13 <b>Q. And -- and what is the frequency of</b></p> <p>14 <b>that happening in your office?</b></p> <p>15 A. I don't have an exact percentage.</p> <p>16 <b>Q. Uh-huh.</b></p> <p>17 A. The computer does not track that. It</p> <p>18 would have to be hand calculated. But when we do</p> <p>19 promotion reviews I hand calculate that, and notice</p> <p>20 that in a percentage of cases some lawyers have</p> <p>21 missed those marks.</p> <p>22 <b>Q. Would you say it was more than</b></p> <p>23 <b>30 percent?</b></p> <p>24 A. Some lawyers more than 30 percent,</p> <p>25 other lawyers less than five percent.</p>	<p style="text-align: right;">Page 60</p> <p>1 in the serious and violent felonies because as I've</p> <p>2 mentioned in this deposition, the focus is on the</p> <p>3 flow of cases, the C, D's, and E's which move quite</p> <p>4 quickly.</p> <p>5 So what happens with some degree of</p> <p>6 frequency is the more serious clients are neglected</p> <p>7 because of caseload problems and rightfully become</p> <p>8 worried and anxious, and that contributes to</p> <p>9 deteriorating attorney-client relations.</p> <p>10 <b>Q. And to prepare for the preliminary</b></p> <p>11 <b>hearings, what if anything does your attorneys do to</b></p> <p>12 <b>prepare for these hearings?</b></p> <p>13 A. In our jurisdiction generally speaking</p> <p>14 a case set for preliminary hearing discovery will be</p> <p>15 provided. However, the timing of that discovery</p> <p>16 when it's released varies because there are probably</p> <p>17 12 prosecutors who are individually responsible for</p> <p>18 disclosing discovery, and some of them are more</p> <p>19 diligent than others.</p> <p>20 So an attorney can meet with a client</p> <p>21 with the discovery and prepare for the preliminary</p> <p>22 hearing if the discovery is provided in time. If</p> <p>23 it's provided two or three days before the</p> <p>24 preliminary hearing, the attorney will have met with</p> <p>25 the client, but not necessarily with the discovery.</p>

15 (Pages 57 to 60)

<p style="text-align: right;">Page 61</p> <p>1       <b>Q. Okay. We're talking about how the</b>  2       <b>attorneys would meet with the client. Where does</b>  3       <b>the client contact generally take place?</b>  4       A. If the client is confined, in the jail.  5       If the client is released, usually over the phone.  6       Although office appointments are offered, I think a  7       lot of released clients do not -- sometimes just  8       don't take that opportunity.  9       <b>Q. And when they meet in the jail, is it</b>  10      <b>usually a confidential place?</b>  11      A. Yes.  12      <b>Q. Are there ways for the clients to call</b>  13      <b>your office I think you mentioned?</b>  14      A. Yes.  15      <b>Q. And that's where the legal assistants</b>  16      <b>take the calls, right, or the clerks?</b>  17      A. We all -- the jail, all of the inmates  18      in the jail can make free phone calls to our office  19      several times a day. Our phone system is provided  20      by the county. So it has to go through the  21      operator.  22      <b>Q. And then after the preliminary hearing</b>  23      <b>and a case is set for -- or is going through the</b>  24      <b>litigation, what is the percentage of client contact</b>  25      <b>by your attorneys?</b></p>	<p style="text-align: right;">Page 63</p> <p>1       not make that number a hundred percent.  2       <b>Q. And in your opinion, do you attribute</b>  3       <b>that to the caseload problems?</b>  4       A. Yes.  5       <b>Q. You said that they had -- they meet</b>  6       <b>with the -- the client at the jail for the first</b>  7       <b>meeting. Do they need to meet with their client at</b>  8       <b>the jail for any subsequent meetings, those 60 days?</b>  9       A. Yes.  10      <b>Q. Does that -- does that have any impact</b>  11      <b>on their time to travel to the jail?</b>  12      A. No.  13      <b>Q. The jail is fairly close?</b>  14      A. The jail is in the same building as the  15      courthouse.  16      <b>Q. Okay. What about for clients that are</b>  17      <b>in state prison or in federal prison?</b>  18      A. That is a challenge.  19      <b>Q. Can you explain why that's a challenge?</b>  20      A. Phone calls are not readily set up.  21      Each Missouri state prison seems to have a different  22      policy for setting up phone calls, whether they're  23      collect, who dials in, what hours can be used.  24      Each Missouri state prison also has  25      varying hours when attorneys can set up in-person</p>
<p style="text-align: right;">Page 62</p> <p>1       A. I'm not understanding the question.  2       <b>Q. Does your attorneys have any</b>  3       <b>difficulties meeting with clients after the</b>  4       <b>preliminary hearing because --</b>  5       A. Because of -- because of caseload  6       problems?  7       <b>Q. Yes.</b>  8       MR. MOORE: Also object to the form of  9       the question because it's vague, but you can  10      respond.  11      A. Because of the caseload numbers,  12      keeping up with visitation with the clients in the  13      jail is difficult for every attorney in my office.  14      <b>Q. (By Ms. Rosca) Is there a policy --</b>  15      <b>you mentioned that ten days after you've -- you've</b>  16      <b>entered as counsel. Is there a policy after the</b>  17      <b>preliminary hearing as to how many times the</b>  18      <b>attorney should meet with their client?</b>  19      A. The policy is meet with the client  20      within ten days of assignment --  21      <b>Q. Uh-huh.</b>  22      A. -- and every 60 days thereafter.  23      <b>Q. And has your attorneys been able to</b>  24      <b>meet the every 60 days thereafter?</b>  25      A. Our attorneys struggle with that and do</p>	<p style="text-align: right;">Page 64</p> <p>1       visits. For example, Potosi Correctional Center,  2       it's Friday afternoon, Saturdays, and Sundays.  3       So you cannot see somebody in Potosi  4       Correctional Center Monday, Tuesday, Wednesday,  5       Thursday, Friday morning. And that involves a huge  6       amount of travel obviously.  7       <b>Q. And what about clients that may face</b>  8       <b>any immigration consequences, do your attorneys have</b>  9       <b>a lot of clients with that issue?</b>  10      A. Our jurisdiction does not have a very  11      high percentage of clients with that issue.  12      <b>Q. Okay.</b>  13      A. Attorneys inquire of every client about  14      nationality, place of birth, immigration status, and  15      are very aware of the issue.  16      <b>Q. Okay. Let's talk about the resources</b>  17      <b>that your office has apart from just the staff that</b>  18      <b>work there. Do you -- do you have any social</b>  19      <b>workers working in your office? I don't think you</b>  20      <b>mentioned.</b>  21      A. No.  22      <b>Q. Has that had any impact on how your</b>  23      <b>attorneys defend their cases?</b>  24      A. I would say that because -- and this is  25      a national trend, and our office is part of this, is</p>

16 (Pages 61 to 64)

<p style="text-align: right;">Page 65</p> <p>1 many cases are negotiated even through litigation.  2 And that mitigation at sentencing is crucial, and  3 the lack of social workers to create mitigation  4 reports is I would say -- it's sort of unimaginable  5 that Missouri State Public Defender has no social  6 workers. It's just -- it seems like that's just  7 what's done in criminal defense across the board.  8 <b>Q. And have you tried to request any</b>  9 <b>resources for social worker reports either to the</b>  10 <b>central office?</b>  11 A. What our lawyers tends to do is in  12 certain cases we try to hire psychiatrists to create  13 those reports, but it's very expensive and it's very  14 selective.  15 <b>Q. Would these psychiatrists be acting as</b>  16 <b>experts then?</b>  17 A. Yes.  18 <b>Q. What resources are available to your</b>  19 <b>attorneys to then -- to hire these experts? Can you</b>  20 <b>go through the process of how they would obtain an</b>  21 <b>expert for their case?</b>  22 A. They would contact the expert, talk  23 about the background of the case, get an estimate,  24 and then submit an E request for money.  25 <b>Q. Do they submit it to you?</b></p>	<p style="text-align: right;">Page 67</p> <p>1 <b>Q. Is that request made to you?</b>  2 A. Yes.  3 <b>Q. Have you ever denied taking a</b>  4 <b>deposition?</b>  5 A. No.  6 <b>Q. Is there a certain point in -- in any</b>  7 <b>case, and I understand there are very different</b>  8 <b>cases so it would run differently, but generally is</b>  9 <b>there a certain point where the attorneys are</b>  10 <b>requesting these resources, is it usually, you know,</b>  11 <b>prior -- like a month or two prior before trial or</b>  12 <b>are they working to request these resources at the</b>  13 <b>outset of the case?</b>  14 A. I would say the trend is to request  15 depositions closer to trial than probably is in the  16 best interest of the client in the case.  17 <b>Q. And why do you think the attorneys are</b>  18 <b>delaying their requests for depositions to closer to</b>  19 <b>trial?</b>  20 A. I don't know --  21 MR. MOORE: Just object to -- go ahead.  22 I'll object to the form of the question. I think it  23 misstates prior testimony, but it sounds like you  24 were kind of going there, so go ahead.  25 A. I don't think it's an intentional</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Yes.  2 <b>Q. And what do you consider in approving</b>  3 <b>those requests?</b>  4 A. Meaning?  5 <b>Q. Meaning are there any factors you</b>  6 <b>consider as to whether you should approve a request</b>  7 <b>for an expert?</b>  8 A. Usually it's self-explanatory in the  9 request that the -- the attorney has done enough  10 investigation that there's certain school records,  11 medical records, health history, social histories  12 that indicate that a social mitigation report would  13 be helpful, and the state of negotiations, that that  14 mitigation report could help with sentencing, either  15 persuading the prosecutor or the court.  16 <b>Q. Have you ever denied an expert request?</b>  17 A. No.  18 <b>Q. You said they were very expensive.</b>  19 <b>Does it have an impact on your local office budget?</b>  20 A. Not to my knowledge.  21 <b>Q. What about taking depositions, what</b>  22 <b>resources are available to your attorneys for taking</b>  23 <b>depositions?</b>  24 A. They can request to take a deposition  25 in cases.</p>	<p style="text-align: right;">Page 68</p> <p>1 delay. I think what's happening is the request is  2 not happening until that 60-day window because of  3 the caseload numbers.  4 <b>Q. (By Ms. Rosca) In your opinion, if you</b>  5 <b>had extra attorneys and extra staff, do you think</b>  6 <b>that these resources, like experts, availability of</b>  7 <b>deposition would occur earlier in the case?</b>  8 A. Certain --  9 MR. MOORE: I'm sorry. Again, just  10 calls for speculation, but you can go ahead.  11 A. Yes.  12 <b>Q. (By Ms. Rosca) How about translators,</b>  13 <b>do you run into request -- do your attorneys</b>  14 <b>generally need to request translators for their</b>  15 <b>cases?</b>  16 A. For certain percentage, yes.  17 <b>Q. And what resources are available to</b>  18 <b>them to request translators?</b>  19 A. There are several agencies in St. Louis  20 that provide translation services that we'll hire on  21 an hourly basis.  22 <b>Q. And does the request go to you to</b>  23 <b>approve for obtaining a translator?</b>  24 A. Yes.  25 <b>Q. And have you ever denied providing a</b></p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 translator for any of the attorneys?</p> <p>2 A. No.</p> <p>3 Q. Is there any -- does the central office</p> <p>4 have any policy or guideline as to how much your</p> <p>5 office can spend on these resources?</p> <p>6 A. To my knowledge, no.</p> <p>7 Q. Okay.</p> <p>8 A. I know there's a number in our office</p> <p>9 budget, but I don't think that number is ever</p> <p>10 actually ever used for depositions and experts. I</p> <p>11 think it's something like ten or \$20,000, but it's</p> <p>12 always exceeded.</p> <p>13 Q. So what about pretrial investigations,</p> <p>14 do you -- I assume your attorneys engage in</p> <p>15 pretrial investigations?</p> <p>16 A. Yes.</p> <p>17 Q. Do you -- in your opinion, do you think</p> <p>18 they're spending enough time conducting pretrial</p> <p>19 investigations?</p> <p>20 A. I would say that they're not because</p> <p>21 attorneys have mentioned to me that they're not.</p> <p>22 Q. And what is the reason for being unable</p> <p>23 to do so?</p> <p>24 A. Caseload numbers.</p> <p>25 Q. Would you say that's true specifically</p>	<p style="text-align: right;">Page 71</p> <p>1 It was an assault trial where he was</p> <p>2 unable to investigate witnesses that the client had</p> <p>3 asked him to investigate that the client said would</p> <p>4 be witnesses in his favor that he did not commit the</p> <p>5 assault.</p> <p>6 Q. Is that an atypical case or does that</p> <p>7 typically happen for other attorneys in your office</p> <p>8 since 2014?</p> <p>9 A. I'm sure it happens.</p> <p>10 Q. And why do you say you're sure it</p> <p>11 happens? What's your basis for that conclusion?</p> <p>12 A. Two reasons. The attorneys in my</p> <p>13 office are saying that people are pleading guilty</p> <p>14 because they've been in jail and they're waiting too</p> <p>15 long. And the attorneys are concerned that people</p> <p>16 are pleading guilty to get out of jail, not because</p> <p>17 they're actually guilty, and are unable -- and the</p> <p>18 attorneys are unable to work on those cases.</p> <p>19 So attorneys have reported that problem</p> <p>20 to me. And then we will get complaint calls and</p> <p>21 complaint letters from clients and it goes to the</p> <p>22 diligence problem of these things have not been done</p> <p>23 on my case, these witnesses have not been contacted.</p> <p>24 Q. Okay. Can we talk about motions for a</p> <p>25 moment? Just particularly discovery motions.</p>
<p style="text-align: right;">Page 70</p> <p>1 for interviewing witnesses?</p> <p>2 A. Yes.</p> <p>3 Q. How about visiting the crime scene?</p> <p>4 A. Yes.</p> <p>5 Q. How about investigating the police</p> <p>6 conduct?</p> <p>7 A. Yes.</p> <p>8 Q. Can you think of a situation where --</p> <p>9 and you don't have to disclose or compromise any</p> <p>10 attorney-client privilege, but a time where either</p> <p>11 your representation or that of the attorneys in your</p> <p>12 office was hampered by the inability to investigate</p> <p>13 a case sufficiently?</p> <p>14 MR. MOORE: Just object to the form of</p> <p>15 the question. It's vague. Subject to that, you can</p> <p>16 respond.</p> <p>17 A. Yes.</p> <p>18 Q. (By Ms. Rosca) Could you provide the</p> <p>19 details of that instance?</p> <p>20 A. This is an instance that's currently</p> <p>21 being litigated in a PCR hearing, and it was</p> <p>22 litigated on appeal, so I don't think it affects</p> <p>23 much confidentiality. There was a lawyer in our</p> <p>24 office that was in this period of 2014 where they</p> <p>25 were -- the caseload was 200 cases.</p>	<p style="text-align: right;">Page 72</p> <p>1 Attorneys in your office file discovery motions I</p> <p>2 assume?</p> <p>3 A. Yes.</p> <p>4 Q. Have you -- has any attorney in your</p> <p>5 office provided concern about not having enough time</p> <p>6 to prepare for these discovery motions?</p> <p>7 A. Discovery motions in Missouri are pro</p> <p>8 forma, meaning they're filed. It's based upon a</p> <p>9 Supreme Court rule.</p> <p>10 Q. Uh-huh.</p> <p>11 A. So there's really not much time</p> <p>12 involved in filing the motion where the -- the time</p> <p>13 in discovery takes place is making sure that the</p> <p>14 prosecutor has disclosed everything that's</p> <p>15 discoverable.</p> <p>16 Q. And how has the trend been with</p> <p>17 requesting discovery from the prosecutor's office in</p> <p>18 your district? Has it been difficult to get the</p> <p>19 discovery in a timely manner?</p> <p>20 A. Generally not. There are some</p> <p>21 prosecutors that are more difficult to get the</p> <p>22 discovery from than others.</p> <p>23 Q. Are the requests for the discovery from</p> <p>24 the prosecutor's office made at a later point in the</p> <p>25 case by your attorneys?</p>

18 (Pages 69 to 72)

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<p style="text-align: right;">Page 73</p> <p>1 A. They're made in associate court.</p> <p>2 <b>Q. Okay.</b></p> <p>3 A. When we had her on the case.</p> <p>4 <b>Q. So early on?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. What about reviewing the discovery that</b></p> <p>7 <b>you receive from the prosecutor's office, has</b></p> <p>8 <b>attorneys in your office expressed concern that</b></p> <p>9 <b>they've been unable to fully and sufficiently review</b></p> <p>10 <b>the discovery they receive?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Do you have any examples of that</b></p> <p>13 <b>happening?</b></p> <p>14 A. Last month an attorney when we were</p> <p>15 discussing caseload numbers and how to approach the</p> <p>16 courts and reach a resolution for the Hinkebein</p> <p>17 problem mentioned that she was worried that she had</p> <p>18 plead clients to cases where she had not adequately</p> <p>19 reviewed the discovery, but the client just wanted</p> <p>20 to get out of jail and plead guilty.</p> <p>21 <b>Q. When you do the evaluations of the</b></p> <p>22 <b>attorneys in your office, is that something that you</b></p> <p>23 <b>consider? Is that -- whether or not they're</b></p> <p>24 <b>reviewing discovery and in a timely manner?</b></p> <p>25 A. That is not one of the -- the factors</p>	<p style="text-align: right;">Page 75</p> <p>1 <b>to caseload concerns?</b></p> <p>2 MR. MOORE: Just object to the form of</p> <p>3 the question. Calls for speculation. It's also</p> <p>4 vague. Subject to that, you can respond.</p> <p>5 A. They are concerned -- previous to the</p> <p>6 Hinkebein they were concerned about the caseload and</p> <p>7 their ability to ethically represent clients. Post</p> <p>8 decision they're concerned that they on top of not</p> <p>9 being able to do a good job for their clients, that</p> <p>10 their law license may be jeopardized for something</p> <p>11 beyond their control.</p> <p>12 <b>Q. (By Ms. Rosca) And knowing these</b></p> <p>13 <b>concerns has -- has your office taken any formal</b></p> <p>14 <b>action in response to the Hinkebein decision?</b></p> <p>15 A. Our office sent a conditional letter to</p> <p>16 the judges saying that pretty much at any moment we</p> <p>17 could start that process, but before starting that</p> <p>18 process we wanted to engage in constructive dialogue</p> <p>19 with the courts for solutions.</p> <p>20 And so for the past two months we have</p> <p>21 been meeting with the judges regularly to try to</p> <p>22 reach a resolution. So we -- that's how we</p> <p>23 approached it.</p> <p>24 <b>Q. When you say you're meeting with the</b></p> <p>25 <b>judges regularly, what are -- what's being discussed</b></p>
<p style="text-align: right;">Page 74</p> <p>1 because I think that's very hard to measure unless</p> <p>2 you interview the lawyer.</p> <p>3 <b>Q. Do attorneys in your district regularly</b></p> <p>4 <b>seek continuances?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And what do you think the reason for</b></p> <p>7 <b>regularly seeking it is?</b></p> <p>8 A. The case is not ready for disposition.</p> <p>9 <b>Q. And what typically are the reasons that</b></p> <p>10 <b>it would not be ready for disposition?</b></p> <p>11 A. More investigation for mitigation</p> <p>12 before a plea. More trial preparation if it's a</p> <p>13 case headed to trial.</p> <p>14 <b>Q. You've been mentioning the Hinkebein</b></p> <p>15 <b>decision through your testimony today, so I'd like</b></p> <p>16 <b>to sort of turn to that. The first question before</b></p> <p>17 <b>getting there is you said that there hasn't been an</b></p> <p>18 <b>instance where an attorney has refused an</b></p> <p>19 <b>assignment; is that correct?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. Okay. And by that logic your office</b></p> <p>22 <b>hasn't refused assignments?</b></p> <p>23 A. Correct.</p> <p>24 <b>Q. Okay. How has the Hinkebein decision</b></p> <p>25 <b>impacted the attorneys in your district with respect</b></p>	<p style="text-align: right;">Page 76</p> <p>1 <b>at these meetings?</b></p> <p>2 A. Wait lists, private appointments to the</p> <p>3 St. Louis County Bar. Judges rethinking how they do</p> <p>4 probation violations.</p> <p>5 <b>Q. Can we start with wait lists? Is there</b></p> <p>6 <b>currently a wait list in your district?</b></p> <p>7 A. No.</p> <p>8 <b>Q. And so what would be the proposal with</b></p> <p>9 <b>respect to the wait list?</b></p> <p>10 A. What is being considered is a wait list</p> <p>11 would be generated of clients who were released and</p> <p>12 then a number of what is an appropriate, reasonable</p> <p>13 amount of cases would be assigned per attorney, and</p> <p>14 unless the -- unless the attorney was below that</p> <p>15 number everybody on bond would be on a wait list.</p> <p>16 <b>Q. So those who are confined or in jail</b></p> <p>17 <b>would not be on the wait list, they would still get</b></p> <p>18 <b>a public defender?</b></p> <p>19 A. That's what's being contemplated right</p> <p>20 now.</p> <p>21 <b>Q. Okay. You said private appointments.</b></p> <p>22 <b>Can you explain a little bit about what that</b></p> <p>23 <b>proposal is considering?</b></p> <p>24 A. In order to get our numbers where each</p> <p>25 lawyer would be under a hundred cases -- and we're</p>

19 (Pages 73 to 76)

<p style="text-align: right;">Page 77</p> <p>1 just using that number as an arbitrary number right 2 now. We would have to shed 700 cases -- 500 to a 3 thousand cases. That can only be achieved through 4 private appointments. 5 Also, there's a concern if a wait list 6 is generated that speedy trial rights would be 7 violated from the defendants. So the court is 8 thinking of private appointments. How to appoint 9 that number of cases is exceedingly difficult and 10 it's expected that the private bar will be 11 resistant. 12 <b>Q. Now, these private appointments, would</b> 13 <b>they be mandatory I would assume?</b> 14 A. To be decided. 15 MS. ROSCA: I'm going to introduce an 16 exhibit. Are we on 39? The court reporter is going 17 to mark this document as Exhibit 39, or Reynolds 18 Exhibit 39. And the Bates number for this document 19 is MSPD0039427. 20 (WHEREIN, Exhibit 39, 10-12-17 Reynolds 21 message to Judges Beach and Burton, was marked for 22 identification by the Court Reporter.) 23 MS. ROSCA: Could you review the 24 document and let me know when you finish reviewing 25 it? I'm going to introduce Exhibit 40 as well in</p>	<p style="text-align: right;">Page 79</p> <p>1 <b>Burton?</b> 2 A. Our caseload and the Hinkebein 3 decision. 4 <b>Q. What about your caseload?</b> 5 A. That it was ethically unmanageable due 6 to its size. 7 <b>Q. And what was his response?</b> 8 A. He agreed. 9 <b>Q. Is that all that he said?</b> 10 A. He believes that the Hinkebein decision 11 should be taken seriously and he wanted -- he was 12 reaching out to us to meet and try to come up with 13 solutions. 14 <b>Q. So he reached out to you?</b> 15 A. Yes. At the same time that I was going 16 to reach out to the judges. I had heard that he 17 wanted to reach out to us. 18 <b>Q. And how did you hear that he wanted to</b> 19 <b>reach out to you?</b> 20 A. I forget. 21 <b>Q. Okay. It says in the e-mail that -- so</b> 22 <b>this e-mail also has Judge Beach copied on to it; is</b> 23 <b>that correct?</b> 24 A. Correct. 25 <b>Q. And it says (quote as read):</b></p>
<p style="text-align: right;">Page 78</p> <p>1 conjunction. 2 (WHEREIN, Exhibit 40, 10-12-17 Reynolds 3 letter to Judges Beach and Burton, was marked for 4 identification by the Court Reporter.) 5 <b>Q. (By Ms. Rosca) But just first the big</b> 6 <b>-- Reynolds Exhibit 39, have you seen this document</b> 7 <b>before?</b> 8 A. Yes. 9 <b>Q. How have you seen this document before?</b> 10 A. I created it. 11 <b>Q. And what is it?</b> 12 A. It's an e-mail that I sent to Judge 13 Beach and Judge Burton. 14 <b>Q. And when did you send it?</b> 15 A. October 12th, 2017. 16 <b>Q. And what is the substance of the</b> 17 <b>e-mail?</b> 18 A. It's a request to meet with them to 19 talk about our caseload and the Hinkebein decision. 20 <b>Q. And if you look at the first sentence</b> 21 <b>of the e-mail, it says I met with -- or I met</b> 22 <b>informally with Judge Burton this week; is that</b> 23 <b>correct?</b> 24 A. Correct. 25 <b>Q. And what did you discuss with Judge</b></p>	<p style="text-align: right;">Page 80</p> <p>1 <b>I have attached a formal letter</b> 2 <b>outlining our ethical dilemma in the</b> 3 <b>wake of in re Hinkebein.</b> 4 <b>Can you describe what the ethical</b> 5 <b>dilemma is?</b> 6 A. It's outlined in the letter. 7 <b>Q. Okay. So if you turn to Reynolds</b> 8 <b>Exhibit 40, is this the letter that was attached to</b> 9 <b>this e-mail?</b> 10 A. Correct. 11 <b>Q. And just for the record, this is</b> 12 <b>MSPD0039433. Did you write this letter?</b> 13 A. I did. 14 <b>Q. And what is the substance of this</b> 15 <b>letter?</b> 16 MR. MOORE: Just object -- also object. 17 I mean, it calls for a narrative and I think the 18 document speaks for itself, but subject to that you 19 can continue. 20 <b>Q. (By Ms. Rosca) What is this letter</b> 21 <b>about?</b> 22 A. The caseload numbers in our office and 23 the ethical obligations under in re Hinkebein. 24 <b>Q. If you see the first paragraph of your</b> 25 <b>letter, it says (quote as read):</b></p>

20 (Pages 77 to 80)



<p style="text-align: right;">Page 81</p> <p>1 Hinkebein's discipline occurred within</p> <p>2 the context of a high caseload beyond</p> <p>3 his control, a reality familiar to all</p> <p>4 Missouri public defenders.</p> <p>5 Is this reality also true for your</p> <p>6 office?</p> <p>7 A. Yes.</p> <p>8 Q. Then you write in the next line that</p> <p>9 (quote as read):</p> <p>10 I am writing to you today about the</p> <p>11 caseload problems in our office and --</p> <p>12 and the ethical dilemma we currently</p> <p>13 face with regard to our current and</p> <p>14 future clients.</p> <p>15 Could you explain what you meant by</p> <p>16 that sentence?</p> <p>17 A. Our lawyers want to provide ethical</p> <p>18 representation to all of the clients. Because of</p> <p>19 the caseload numbers, that's impossible to do. And</p> <p>20 there's no way for our office to control the</p> <p>21 caseload numbers.</p> <p>22 Q. And did you reach that conclusion</p> <p>23 because you've spoken to the attorneys in your</p> <p>24 office about this?</p> <p>25 A. Yes, and just the number of cases</p>	<p style="text-align: right;">Page 83</p> <p>1 evaluate the attorneys in your office, do you</p> <p>2 believe the attorneys in your office are meeting</p> <p>3 those standards?</p> <p>4 A. Not in every case.</p> <p>5 Q. And is that because of the high</p> <p>6 caseload issue for your office?</p> <p>7 A. Yes.</p> <p>8 Q. And footnote three you say that (quote</p> <p>9 as read):</p> <p>10 Managers also have a duty to make sure</p> <p>11 that no attorney under their</p> <p>12 supervision violates the rules,</p> <p>13 Missouri Supreme Court Rule 4-5.1(c).</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. In your opinion, do you think this rule</p> <p>17 applies to you as the district defender?</p> <p>18 A. Yes.</p> <p>19 Q. And what have you been doing to ensure</p> <p>20 that the attorneys in your office don't violate the</p> <p>21 ethics rules?</p> <p>22 A. Since Hinkebein I've been working with</p> <p>23 the judges to try to come up with a solution for</p> <p>24 caseload relief.</p> <p>25 Q. Does that include just the</p>
<p style="text-align: right;">Page 82</p> <p>1 coming into the office.</p> <p>2 Q. You also write that in the middle the</p> <p>3 second paragraph it says (quote of read):</p> <p>4 I'm asking you to collaborate with us</p> <p>5 in solving not only the problem of high</p> <p>6 public defender caseloads but also the</p> <p>7 quality of justice in Missouri.</p> <p>8 What do you mean by the quality of</p> <p>9 justice in Missouri?</p> <p>10 A. Because public defenders handle like --</p> <p>11 something like 80 percent of all criminal cases and</p> <p>12 do not have enough time to work on the cases I think</p> <p>13 that calls -- calls into question the quality of</p> <p>14 justice across the state.</p> <p>15 Q. And then in the footnote on the bottom,</p> <p>16 footnote one, you cite to Missouri rules, ethic</p> <p>17 rules. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Can you -- what is your understanding</p> <p>20 of the rules that you're citing here? What do they</p> <p>21 require?</p> <p>22 A. That an attorney be attentive to what</p> <p>23 issues the case presents and follow up on those</p> <p>24 issues as a reasonable lawyer would do.</p> <p>25 Q. In your opinion based on how you</p>	<p style="text-align: right;">Page 84</p> <p>1 conversations with the judiciary?</p> <p>2 A. To date that's largely been what we are</p> <p>3 doing.</p> <p>4 Q. And what are your plans if that is</p> <p>5 unsuccessful?</p> <p>6 A. That is still to be decided. The</p> <p>7 problem is if this is not successful then we end up</p> <p>8 in litigation. Litigation is -- I don't know if</p> <p>9 that would be any more successful.</p> <p>10 Q. Litigation in terms of --</p> <p>11 A. The procedure under Chapter 600.</p> <p>12 Q. Okay. In the second page of your</p> <p>13 letter you said that (quote as read):</p> <p>14 Many attorneys in my office carry a</p> <p>15 caseload of 100 to 175 pending</p> <p>16 felonies.</p> <p>17 Is that an accurate statement?</p> <p>18 A. Yes. That is based off of the live</p> <p>19 caseload at the time I created this letter.</p> <p>20 Q. Has it increased since you've created</p> <p>21 this letter?</p> <p>22 A. It has slightly decreased.</p> <p>23 Q. What is the reason for the decrease do</p> <p>24 you think?</p> <p>25 A. I do not know.</p>

21 (Pages 81 to 84)



<p style="text-align: right;">Page 85</p> <p>1       <b>Q. You say that at the end of the sentence</b>  2       <b>that (quote as read):</b>  3       <b>Within this caseload most attorneys</b>  4       <b>have two to five murders, five to ten</b>  5       <b>sex offenses, and five to 20 violent</b>  6       <b>felonies. By any standard this is an</b>  7       <b>ethically unmanageable caseload.</b>  8       <b>Do you see that statement?</b>  9       A. Yes.  10       <b>Q. What do you mean by ethically</b>  11       <b>unmanageable caseload?</b>  12       A. I think and I believe that whenever  13       that amount of serious violent felonies are  14       concentrated in one lawyer, even the most  15       experienced practitioner, whether they be public  16       defender or in private practice, would struggle and  17       not be able to achieve ethical representation.  18       <b>Q. And then the paragraph after that you</b>  19       <b>say (quote as read):</b>  20       <b>All public defenders in St. Louis</b>  21       <b>County are one phone call or one letter</b>  22       <b>away from a complaint to the</b>  23       <b>disciplinary counsel, an investigation</b>  24       <b>and a finding that clients were not</b>  25       <b>communicated with for months and cases</b></p>	<p style="text-align: right;">Page 87</p> <p>1       attorneys?  2       A. They do their best to resolve the  3       problem.  4       <b>Q. And what is the difficulty in not being</b>  5       <b>able to see their clients according to them?</b>  6       A. The number of cases, the speed of the  7       cases, the number of court appearances required.  8       <b>Q. You said that an investigation in</b>  9       <b>finding the clients were not communicated with for</b>  10       <b>months. Is that true that clients would not be</b>  11       <b>communicated with for months?</b>  12       A. That is true for clients represented in  13       our office.  14       <b>Q. Does that include clients that are</b>  15       <b>detained?</b>  16       A. Yes.  17       <b>Q. Are you aware of the -- the longest</b>  18       <b>amount of time a client has been detained and has</b>  19       <b>not communicated with their attorney, what length of</b>  20       <b>period of time is the longest?</b>  21       A. May I break that question into two?  22       <b>Q. Absolutely. It's a compound question</b>  23       <b>anyway.</b>  24       A. There have been clients who have not  25       been communicated with counsel in nine months to a</p>
<p style="text-align: right;">Page 86</p> <p>1       <b>were left untouched for the same period</b>  2       <b>or longer.</b>  3       <b>Do you see that?</b>  4       A. Yes.  5       <b>Q. Do you still believe that this</b>  6       <b>statement is accurate?</b>  7       A. It is accurate today.  8       <b>Q. What do you mean by they're one phone</b>  9       <b>call or one letter away from a complaint to the</b>  10       <b>disciplinary counsel?</b>  11       A. There are many clients in our office  12       represented by lawyers who have not been seen in  13       months and their cases have not been worked on in  14       months. I receive those complaint calls. The  15       Woodrill office receives those complaint calls.  16       We receive letters. If the letter was  17       directed to disciplinary counsel, the -- the lack of  18       diligence would still be there and we would be  19       dealing with a disciplinary counsel rather than an  20       internal complaint.  21       <b>Q. When you receive these complaints from</b>  22       <b>your clients, what do you -- do you have a</b>  23       <b>conversation with the attorneys being complained of?</b>  24       A. Yes.  25       <b>Q. And what is the response from the</b></p>	<p style="text-align: right;">Page 88</p> <p>1       year in my office.  2       <b>Q. Are those clients detained or confined?</b>  3       A. Detained.  4       <b>Q. Okay. And then what about for others</b>  5       <b>who are released?</b>  6       A. Most clients who are released, they are  7       part of the C, D's, and E's that move very quickly  8       within -- disposed of within a hundred days or less.  9       I'm sure that occurs, but we don't get complaints  10       from those clients.  11       <b>Q. Yes. Understandably.</b>  12       A. So I don't know the numbers.  13       <b>Q. So the one that's -- the clients that</b>  14       <b>are detained or confined for you said nine months at</b>  15       <b>least and not receiving client contact, what is</b>  16       <b>happening to their cases? Are attorneys still -- go</b>  17       <b>ahead.</b>  18       A. One of two things. They tend to be the  19       more serious cases where the trial -- because of the  20       St. Louis County dockets are very busy, trial may  21       have been set a year to 18 months out, and then the  22       client became neglected.  23       It could be it's still a serious case  24       and it's popping up on the docket every 30 to  25       60 days and the attorney because they're overloaded</p>

22 (Pages 85 to 88)

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1 is substituting talking to the client in court  
2 rather than visiting the client.

3 **Q. So for example, a client has been**  
4 **detained for nine months, there's -- there's a court**  
5 **appearance set and the attorney has not spoken to**  
6 **that client for those nine months and speaks to that**  
7 **client for the first time at that court appearance?**

8 A. What would be more likely is that the  
9 -- the case has been continued three times within a  
10 nine-month period, but the only client contact has  
11 been between the attorney and the client when the  
12 client is appearing for those court dates in court.  
13 There hasn't been a confidential visit and along  
14 with the confidential visit there hasn't been work  
15 done on the case.

16 **Q. How has that impacted the relationship**  
17 **with those clients?**

18 A. The attorney-client relationship is  
19 highly damaged and it takes a lot of effort to  
20 repair it.

21 **Q. And when you say that the attorney is**  
22 **not working on that -- on the case, why would they**  
23 **not be working on the case?**

24 A. They have too many cases.

25 MR. MOORE: I'll also object, note my

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1 out with the court.

2 **Q. And if you stop assigning cases, what**  
3 **will happen to those potential clients?**

4 A. This letter was written before the most  
5 recent decision in the Hinkebein matter. So it has  
6 to be read in that context.

7 **Q. Can you give some -- can you explain**  
8 **what you mean by the most recent decision in the**  
9 **Hinkebein matter?**

10 A. I don't know the case style, but early  
11 on the public defender was under the assumption that  
12 because of the ethical rule we could stop assigning  
13 cases without going through the procedure in Chapter  
14 600.

15 **Q. Uh-huh.**

16 A. Shortly after this letter was written  
17 there was an appellate decision saying the public  
18 defender cannot stop assigning cases based upon the  
19 ethical rules. They have to go through the Chapter  
20 600 procedure. So this letter was written before  
21 that appellate decision.

22 **Q. Got it. These two -- this e-mail --**  
23 **the e-mail and the letter, what has been the**  
24 **communication with the judiciary since you sent this**  
25 **letter?**

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1 objection because it calls for speculation. But  
2 your answer is on the record, so --

3 **Q. (By Ms. Rosca) Just finally on this**  
4 **letter you also say -- you also say that this**  
5 **problem has been in existence for years. Is that**  
6 **correct?**

7 A. Yes.

8 **Q. How -- how long would you say this has**  
9 **been going on?**

10 A. When I came back to the public defender  
11 in 2007 caseload numbers were a priority for  
12 management in all offices.

13 **Q. And you also say in this letter that**  
14 **(quote as read):**

15 **At some point in the near future at the**  
16 **request of an attorney under the**  
17 **ethical rules I will stop assigning**  
18 **cases to that attorney until their**  
19 **caseload issue is resolved.**

20 **Do you see that?**

21 A. Yes.

22 **Q. Is that an option you're willing to**  
23 **take if it comes to that situation?**

24 A. That is what the whole office is going  
25 to do at some point if a resolution is not worked

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1 A. Judiciary has set up a subcommittee  
2 chaired by Judge Kerr, co-chaired by Judge Ribaud,  
3 and I have met with both of them five or six times.  
4 There's also been meetings with the larger  
5 stakeholders in St. Louis County. There's been two  
6 of those meetings. And --

7 **Q. What do you mean -- I'm sorry. What do**  
8 **you mean by the larger stakeholders?**

9 A. Probation and parole, prosecutors  
10 office, clerks office, St. Louis County jail.

11 **Q. Okay. Does the subcommittee have a**  
12 **goal as to when this would be resolved?**

13 A. I've told the subcommittee that we need  
14 an answer sooner rather than later, and early on  
15 said I'd like an answer in January. Because  
16 St. Louis County is seriously considering private  
17 appointments that would be ongoing for potentially  
18 years, that may -- process to figure out how to do  
19 that may take longer than January.

20 **Q. Is there any incentive for the**  
21 **judiciary or the stakeholders to promptly resolve**  
22 **this issue?**

23 A. The stakeholders -- the judiciary that  
24 I've spoken to takes Hinkebein very seriously and  
25 wants to resolve it as quickly as possible. Their

23 (Pages 89 to 92)

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<p style="text-align: right;">Page 93</p> <p>1 timeline perhaps differs than our timeline.</p> <p>2 <b>Q. Are you aware of how other judiciaries</b></p> <p>3 <b>or other districts are reacting to Hinkebein?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Have they had the same response as the</b></p> <p>6 <b>judiciary in your district?</b></p> <p>7 A. No.</p> <p>8 <b>Q. Can you explain the difference?</b></p> <p>9 A. My understanding is Kansas City, which</p> <p>10 is similarly situated, has been actively hostile.</p> <p>11 So the fact that we can actually talk to judges</p> <p>12 about solutions I think at this point is productive</p> <p>13 even though the remedy may not be forthcoming within</p> <p>14 60 days.</p> <p>15 <b>Q. So is the solution to the caseload</b></p> <p>16 <b>problem in your office dependent on whether the</b></p> <p>17 <b>judiciary wants to cooperate or be hostile to the</b></p> <p>18 <b>district defenders office?</b></p> <p>19 A. I believe it is because I think the</p> <p>20 alternative to go into litigation is not going to</p> <p>21 solve any problems.</p> <p>22 MS. ROSCA: We've been going for</p> <p>23 another hour. Would you like to take another</p> <p>24 five-minute break?</p> <p>25 THE WITNESS: Sure.</p>	<p style="text-align: right;">Page 95</p> <p>1 <b>letter to Mr. Barrett?</b></p> <p>2 A. To inform him that under the ethical</p> <p>3 rules in the in re Hinkebein case that caseloads in</p> <p>4 our office were unethically high.</p> <p>5 <b>Q. You write (quote as read):</b></p> <p>6 <b>That caseloads for nearly all attorneys</b></p> <p>7 <b>violate ethical standards.</b></p> <p>8 <b>Do you see that?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Do you agree with that statement?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. And what is the basis for that</b></p> <p>13 <b>statement?</b></p> <p>14 A. The caseload numbers and the</p> <p>15 seriousness of the cases in our office.</p> <p>16 <b>Q. In your -- in the second paragraph of</b></p> <p>17 <b>the letter you say that you're requesting additional</b></p> <p>18 <b>staff, about five to ten additional attorneys, for</b></p> <p>19 <b>individual cases. Do you see that?</b></p> <p>20 A. Yes.</p> <p>21 <b>Q. Is that statement still accurate?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Why do you think your office needs an</b></p> <p>24 <b>additional five to ten attorneys?</b></p> <p>25 A. I think that would give a live caseload</p>
<p style="text-align: right;">Page 94</p> <p>1 MS. ROSCA: Okay. Off the record.</p> <p>2 VIDEOGRAPHER: The time is 3:48. We</p> <p>3 are off the record.</p> <p>4 (WHEREIN, a recess was taken.)</p> <p>5 VIDEOGRAPHER: The time is 3:53. We</p> <p>6 are back on the record.</p> <p>7 MS. ROSCA: Mr. Reynolds, I'm going to</p> <p>8 have the court reporter mark this document</p> <p>9 Exhibit 41.</p> <p>10 (WHEREIN, Exhibit 41, 10-14-17 Reynolds</p> <p>11 letter to Barrett, was marked for identification by</p> <p>12 the Court Reporter.)</p> <p>13 <b>Q. (By Ms. Rosca) Would you please review</b></p> <p>14 <b>the document and let me know when you're finished?</b></p> <p>15 A. I reviewed it.</p> <p>16 <b>Q. Have you seen this document before?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. What is this document?</b></p> <p>19 A. It's a letter I wrote to Michael</p> <p>20 Barrett.</p> <p>21 <b>Q. And just for the record, the Bates</b></p> <p>22 <b>stamp on this is MSPD0039435. When did you write</b></p> <p>23 <b>this letter?</b></p> <p>24 A. October 14th.</p> <p>25 <b>Q. What was the purpose of writing this</b></p>	<p style="text-align: right;">Page 96</p> <p>1 per attorney of somewhere between 50 and 70 cases.</p> <p>2 <b>Q. You say in your letter that you've</b></p> <p>3 <b>initiated dialogue with the St. Louis County</b></p> <p>4 <b>judiciary. Do you see that?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Is the dialogue that you're referring</b></p> <p>7 <b>to in this letter the same as we've been discussing</b></p> <p>8 <b>in the prior exhibits?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. You ask that -- you're requesting that</b></p> <p>11 <b>Mr. Barrett be available to assist in these</b></p> <p>12 <b>discussions if called upon. Do you see that?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. Has Mr. Barrett been involved in -- in</b></p> <p>15 <b>the discussions with regards to caseload issues?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. And how has he been involved?</b></p> <p>18 A. He appeared at one meeting with the</p> <p>19 St. Louis County judiciary, and he has spoken with</p> <p>20 Judge Kerr.</p> <p>21 <b>Q. Did he participate in the meeting?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And what -- what did he say at the</b></p> <p>24 <b>meeting?</b></p> <p>25 A. That he would like to work with</p>

24 (Pages 93 to 96)

<p style="text-align: right;">Page 97</p> <p>1 St. Louis County and he would like St. Louis County</p> <p>2 to come up with solutions to this problem with the</p> <p>3 public defender.</p> <p>4 <b>Q. Did he express -- strike that.</b></p> <p>5 <b>The last part of the paragraph you said</b></p> <p>6 <b>that you alerted the Office of Disciplinary Counsel</b></p> <p>7 <b>that the ethical problems within my office are</b></p> <p>8 <b>systemic. Do you see that?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. What do you mean by systemic?</b></p> <p>11 A. That they're systemic, meaning that the</p> <p>12 number of cases that come in to our office exceed</p> <p>13 what our office can handle and it's not due -- those</p> <p>14 numbers aren't due to anything that the attorneys</p> <p>15 are doing.</p> <p>16 <b>Q. In your opinion, do you think the</b></p> <p>17 <b>attorneys are doing all they can to sufficiently</b></p> <p>18 <b>work on their cases?</b></p> <p>19 MR. MOORE: Just object to the form of</p> <p>20 the question as vague. Subject to that, you can</p> <p>21 respond.</p> <p>22 A. The attorneys are doing the best they</p> <p>23 can under the circumstances.</p> <p>24 MS. ROSCA: I'm going to have the court</p> <p>25 reporter mark Exhibit 42.</p>	<p style="text-align: right;">Page 99</p> <p>1 unmanageable.</p> <p>2 <b>Q. Are the same issues that you raise in</b></p> <p>3 <b>your letter to Mr. Barrett the same as the issues</b></p> <p>4 <b>you are raising in this letter to Mr. Pratzel?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. You also mention in this letter to</b></p> <p>7 <b>Mr. Pratzel that you've notified your supervisor</b></p> <p>8 <b>Michael Barrett in order to resolve this problem.</b></p> <p>9 <b>Do you see that?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. And is the letter from Exhibit 41 the</b></p> <p>12 <b>letter that you're referencing in this letter to</b></p> <p>13 <b>Mr. Pratzel?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. You say at the end that (quote as</b></p> <p>16 <b>read):</b></p> <p>17 <b>Since public defender caseloads in my</b></p> <p>18 <b>office and throughout --</b></p> <p>19 <b>(Court reporter interruption.)</b></p> <p>20 <b>Q. (By Ms. Rosca) (Quote as read):</b></p> <p>21 <b>Since public defender caseloads in my</b></p> <p>22 <b>office and throughout the state have</b></p> <p>23 <b>been repeat -- repeatedly verified to</b></p> <p>24 <b>exceed ethical bounds.</b></p> <p>25 <b>Do you see that?</b></p>
<p style="text-align: right;">Page 98</p> <p>1 (WHEREIN, Exhibit 42, 10-14-17 Reynolds</p> <p>2 letter to Pratzel, was marked for identification by</p> <p>3 the Court Reporter.)</p> <p>4 <b>Q. (By Ms. Rosca) Can you please review</b></p> <p>5 <b>that document and let me know when you finished</b></p> <p>6 <b>reviewing it?</b></p> <p>7 A. I've reviewed it.</p> <p>8 <b>Q. Have you seen this document before?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. Did you prepare this letter?</b></p> <p>11 A. I did.</p> <p>12 <b>Q. What is this document?</b></p> <p>13 A. It's a letter to the chief disciplinary</p> <p>14 counsel.</p> <p>15 <b>Q. In Exhibit 41, which you also still</b></p> <p>16 <b>have in front of you, you mention that you alerted</b></p> <p>17 <b>the disciplinary counsel. Do you see that?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Is this the letter that was referenced</b></p> <p>20 <b>in the letter to Mr. Barrett?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And what -- what was the purpose of</b></p> <p>23 <b>writing this letter to the disciplinary counsel?</b></p> <p>24 A. Alerting him that the lawyers in our</p> <p>25 office have caseloads that are ethically</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes.</p> <p>2 <b>Q. How have they been verified?</b></p> <p>3 A. I think going back ten years -- I</p> <p>4 forget the names of all the studies, but there's</p> <p>5 been several studies by outside agencies. There's</p> <p>6 been the RubinBrown standards and the exhibits that</p> <p>7 you've been referencing. There's just been numerous</p> <p>8 instances of metrics and outside studies that have</p> <p>9 commented and said that the caseloads are too high.</p> <p>10 <b>Q. And these studies and metrics, what</b></p> <p>11 <b>are -- what is the data that is provided to these</b></p> <p>12 <b>studies and metrics to come up with this conclusion?</b></p> <p>13 A. My understanding, that its been</p> <p>14 internal public defender statistics. One of these</p> <p>15 studies or two of these studies if I'm recalling</p> <p>16 correctly, it's been almost ten years ago, have</p> <p>17 visited at offices, observed and interviewed public</p> <p>18 defenders.</p> <p>19 <b>Q. Do you recall during the time you were</b></p> <p>20 <b>either a district defender or working for the public</b></p> <p>21 <b>defenders office these study -- or the people</b></p> <p>22 <b>conducting the studies visiting your office?</b></p> <p>23 A. Certainly when I was assistant district</p> <p>24 defender in the city of St. Louis.</p> <p>25 <b>Q. What about in St. Louis County?</b></p>

25 (Pages 97 to 100)

<p style="text-align: right;">Page 101</p> <p>1 A. I don't know if there was an outside</p> <p>2 agency that visited us. I can't recall.</p> <p>3 <b>Q. You might have told me this, but do you</b></p> <p>4 <b>input any statistics into a database for your</b></p> <p>5 <b>internal office with respect to caseload?</b></p> <p>6 A. The computer generates the information.</p> <p>7 <b>Q. Can you explain how it generates the</b></p> <p>8 <b>information? Does the attorneys put in their amount</b></p> <p>9 <b>of cases they have manually or --</b></p> <p>10 A. It's programmed through Columbia to</p> <p>11 collect the information based upon whatever is</p> <p>12 entered into the computer.</p> <p>13 <b>Q. Into Lotus?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. Okay. Do you ever review the</b></p> <p>16 <b>statistics entered into the computer just to see how</b></p> <p>17 <b>the attorneys in your office are doing with respect</b></p> <p>18 <b>to caseload?</b></p> <p>19 A. Occasionally.</p> <p>20 <b>Q. And have you reviewed it recently?</b></p> <p>21 A. Yes.</p> <p>22 <b>Q. And what conclusions have you drawn</b></p> <p>23 <b>from reviewing the -- the statistics from those</b></p> <p>24 <b>spreadsheets I assume?</b></p> <p>25 A. The most useful metric is the live</p>	<p style="text-align: right;">Page 103</p> <p>1 <b>Q. With respect to Exhibit 42, the one</b></p> <p>2 <b>with Mr. Pratzel; is that right?</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. Had you -- did you have a response from</b></p> <p>5 <b>Mr. Pratzel after sending this letter?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Did you have a response from anyone at</b></p> <p>8 <b>the chief disciplinary counsel with respect to the</b></p> <p>9 <b>caseload issue post-Hinkebein?</b></p> <p>10 A. No.</p> <p>11 <b>Q. I take it then that the chief</b></p> <p>12 <b>disciplinary counsel's office is not part of the</b></p> <p>13 <b>discussions you're having with the judiciary and the</b></p> <p>14 <b>stakehold -- stakeholders in your district?</b></p> <p>15 A. Correct.</p> <p>16 MS. ROSCA: I'm going to hand the court</p> <p>17 reporter another document, and I'm going to ask that</p> <p>18 he mark it Reynolds Exhibit 43.</p> <p>19 (WHEREIN, Exhibit 43, 10-25-17 Reynolds</p> <p>20 message to various, was marked for identification by</p> <p>21 the Court Reporter.)</p> <p>22 <b>Q. (By Ms. Rosca) Could you please review</b></p> <p>23 <b>document and let me know when you're finished</b></p> <p>24 <b>reviewing it?</b></p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 102</p> <p>1 caseload, what each lawyer is handling at the moment</p> <p>2 you look at the screen. So that would be what I've</p> <p>3 referred to attorneys in our office are handling a</p> <p>4 hundred to 200 cases, that's -- that's the most</p> <p>5 useful metric for day-to-day management of the</p> <p>6 office.</p> <p>7 <b>Q. And you testified previously that's a</b></p> <p>8 <b>hundred to 200 felony cases, correct?</b></p> <p>9 A. Correct.</p> <p>10 <b>Q. Okay. Have you had any further</b></p> <p>11 <b>conversations with Mr. Barrett regarding the issues</b></p> <p>12 <b>you raised in your letter to him?</b></p> <p>13 A. I've spoken to Mr. Barrett four or five</p> <p>14 times since that letter.</p> <p>15 <b>Q. And what has your discussions been</b></p> <p>16 <b>about?</b></p> <p>17 A. Updating him on what has been happening</p> <p>18 with my discussions with the St. Louis County</p> <p>19 judiciary.</p> <p>20 <b>Q. And what has been his response?</b></p> <p>21 A. He wants a solution, as do I, sooner</p> <p>22 rather than later, but at the same time appreciates</p> <p>23 that the St. Louis County judiciary is talking about</p> <p>24 this issue and talking about actual solutions to the</p> <p>25 problem.</p>	<p style="text-align: right;">Page 104</p> <p>1 <b>Q. Have you seen this before?</b></p> <p>2 A. Yes.</p> <p>3 <b>Q. What is it?</b></p> <p>4 A. It's an e-mail that I sent to judges</p> <p>5 who were part of this committee to address public</p> <p>6 defender caseload issues.</p> <p>7 <b>Q. Did you prepare this e-mail?</b></p> <p>8 A. I did.</p> <p>9 <b>Q. Do you see the date on this e-mail?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. What's the date?</b></p> <p>12 A. October 25th, 2017.</p> <p>13 <b>Q. And for the record, this is Bates</b></p> <p>14 <b>number MSPD0039430. You said that this was in</b></p> <p>15 <b>regards to the committee that you testified about</b></p> <p>16 <b>earlier?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. It says here that Mary Fox, the</b></p> <p>19 <b>district defender of the city of St. Louis, has</b></p> <p>20 <b>reported that this measure significantly decreased</b></p> <p>21 <b>her office caseload numbers. Are you -- are you</b></p> <p>22 <b>familiar with Ms. Fox?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. And how do you know her?</b></p> <p>25 A. She's the district defender in the city</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 of St. Louis.</p> <p>2 <b>Q. It appears from this e-mail that you</b></p> <p>3 <b>are using some approaches she's used in her office</b></p> <p>4 <b>as suggestions for your committee; is that correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And why -- why are you using -- what</b></p> <p>7 <b>are the approaches in this -- in Mrs. Fox's district</b></p> <p>8 <b>that you think would be helpful for your district?</b></p> <p>9 A. The city of St. Louis several years</p> <p>10 ago, I don't know exactly when, adopted a screening</p> <p>11 tool for when public defenders would be required in</p> <p>12 probation cases, and it's my understanding that that</p> <p>13 screening tool, which is implemented by the judges,</p> <p>14 reduced the number of probation cases that her</p> <p>15 office handles.</p> <p>16 (Exhibit 32, Previously marked exhibit.)</p> <p>17 <b>Q. (By Ms. Rosca) I'm going to present to</b></p> <p>18 <b>you Exhibit Fox -- Exhibit 32, Fox Exhibit 32. This</b></p> <p>19 <b>is the same from the prior. Is that the screening</b></p> <p>20 <b>tool that you're referring to?</b></p> <p>21 A. That is the order resulting from the</p> <p>22 screening tool, yes.</p> <p>23 <b>Q. And why do you think that this would be</b></p> <p>24 <b>helpful for your district?</b></p> <p>25 A. It would be helpful based upon the</p>	<p style="text-align: right;">Page 107</p> <p>1 A. The judges are considering implementing</p> <p>2 this tool along with other reforms of how probation</p> <p>3 hearings are handled.</p> <p>4 <b>Q. Can you go through this e-mail that you</b></p> <p>5 <b>sent regarding this subcommittee meeting, could you</b></p> <p>6 <b>just explain what the expanded pretrial release</b></p> <p>7 <b>proposal would be?</b></p> <p>8 A. Right now the St. Louis County jail has</p> <p>9 a very small pretrial release program, and that</p> <p>10 program involves a pretrial release officer</p> <p>11 supervising a defendant when they're released from</p> <p>12 custody with various conditions of -- of the</p> <p>13 release, but no money is required.</p> <p>14 So if more clients were released from</p> <p>15 custody without public defender involvement, there's</p> <p>16 the possibility that the clients would be able to be</p> <p>17 reengaged with work and be able to hire private</p> <p>18 counsel.</p> <p>19 <b>Q. What was the response to this proposal</b></p> <p>20 <b>by the judiciary?</b></p> <p>21 A. I believe that coincident with the</p> <p>22 Hinkebein issue and the public defender crisis the</p> <p>23 St. Louis County judiciary was in the process of</p> <p>24 forming a committee to reevaluate bond and release.</p> <p>25 These instances happened to coincide.</p>
<p style="text-align: right;">Page 106</p> <p>1 experience in the city of St. Louis that this order</p> <p>2 based upon the screening tool reduce the number of</p> <p>3 probation cases that the city of St. Louis handled.</p> <p>4 <b>Q. Currently how are probation cases</b></p> <p>5 <b>handled in your district?</b></p> <p>6 A. If the person qualifies for indigency</p> <p>7 we open a probation case.</p> <p>8 <b>Q. Is there a determination as to due</b></p> <p>9 <b>process?</b></p> <p>10 A. No.</p> <p>11 <b>Q. So do attorneys in your office have to</b></p> <p>12 <b>appear for probation cases every time there's a</b></p> <p>13 <b>probation revocation hearing?</b></p> <p>14 A. If the client qualifies for services,</p> <p>15 yes.</p> <p>16 <b>Q. For indigency determinations?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. Then there's no subsequent</b></p> <p>19 <b>determination like this order discusses?</b></p> <p>20 A. At this time, no.</p> <p>21 <b>Q. And how has -- has there been a</b></p> <p>22 <b>response from the judiciary in your subcommittee</b></p> <p>23 <b>meetings about this screening tool?</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. And what has the response been?</b></p>	<p style="text-align: right;">Page 108</p> <p>1 <b>Q. Right now is there a bond schedule for</b></p> <p>2 <b>your district?</b></p> <p>3 A. There is.</p> <p>4 <b>Q. The second proposal that you discuss in</b></p> <p>5 <b>this e-mail is the wait list. Is this the same wait</b></p> <p>6 <b>list you were testifying about earlier?</b></p> <p>7 A. That -- the second paragraph under</p> <p>8 pending cases that begins one of the measures --</p> <p>9 <b>Q. Uh-huh.</b></p> <p>10 A. -- that is technically not a wait list.</p> <p>11 <b>Q. What -- what is it then?</b></p> <p>12 A. The city of St. Louis public defender</p> <p>13 at some point in the past seven to eight years</p> <p>14 stopped taking applications in associate circuit</p> <p>15 court upon a client's first appearance. And that</p> <p>16 action reduced caseloads.</p> <p>17 <b>Q. What do you mean that they stopped</b></p> <p>18 <b>taking applications? What happens to those clients</b></p> <p>19 <b>that want or need counsel?</b></p> <p>20 A. Because I have not worked down there</p> <p>21 when this policy was implemented, I don't have</p> <p>22 direct knowledge. My understanding is unlike the</p> <p>23 county where we have legal assistants who will take</p> <p>24 applications from clients at that first appearance</p> <p>25 after they've been arrested, that does not happen in</p>

27 (Pages 105 to 108)



<p style="text-align: right;">Page 109</p> <p>1 the city, and that applications travel to their 2 office in a different manner.</p> <p>3 And at some point during that process 4 more people are hiring private counsel than applying 5 to the public defender, and as a result caseloads 6 have dropped. Now, how that actually works since 7 I'm not down there, I don't know beyond what I've 8 just described just from hearing the effects.</p> <p>9 <b>Q. Who at the subcommittee meeting 10 proposed comparisons to the city of St. Louis 11 approaches that are now reflected in this e-mail?</b></p> <p>12 A. This e-mail was actually in response to 13 concrete ideas, just throw everything possible on 14 the table. And it might have been Judge Beach when 15 I was meeting with him informally in the hallway 16 just saying throw out ideas beyond private 17 appointments. Not that private appointment wasn't 18 being considered.</p> <p>19 <b>Q. Uh-huh.</b></p> <p>20 A. So this is a laundry list of various 21 ideas, a brainstorming session.</p> <p>22 <b>Q. You do mention in your e-mail that 23 given St. Louis's -- St. Louis County's fiscal need 24 to reduce the jail population, what worked in the 25 city may not necessarily work in St. Louis County.</b></p>	<p style="text-align: right;">Page 111</p> <p>1 jurisdictions in Missouri and judges are talking to 2 one another, you know, this was almost two months 3 ago, that the idea of a wait list as it exists now 4 is perhaps different than what's trying to be 5 articulated in this e-mail.</p> <p>6 <b>Q. Can you describe the proposal for the 7 wait list now?</b></p> <p>8 A. I think conceivably in this St. Louis 9 County and other jurisdictions there's talk about 10 people who were released out of custody being placed 11 on a wait list until the public defender office has 12 capacity to take them.</p> <p>13 <b>Q. The e-mail also talks about the private 14 counsel appointment?</b></p> <p>15 A. Yes.</p> <p>16 <b>Q. Can you explain what that proposal 17 would be?</b></p> <p>18 A. This e-mail in particular is not 19 talking about a large scale appointment process 20 across the bar. What it is referencing at the 21 bottom of the page is there are cases in St. Louis 22 County where a client will have multiple cases and 23 will hire a private lawyer on one of those cases, 24 and the public defender will end up having to 25 represent the client on the other cases because the</p>
<p style="text-align: right;">Page 110</p> <p>1 <b>What do you mean by that?</b></p> <p>2 A. If the public defender does not take 3 applications at that first appearance in associate 4 court, it is likely and probable that more clients 5 will remain confined. If more clients remain 6 confined, the jail population increases.</p> <p>7 In St. Louis County for the past ten 8 years there's been a huge concern of the jail 9 population and it exceeding somewhere around 1,200, 10 and that goes into overtime costs for jail 11 personnel, which impacts St. Louis County 12 financially quite significantly.</p> <p>13 <b>Q. So the wait list then is being referred 14 to in this third paragraph, correct? However, if 15 more defendants, that one. In the alternative wait 16 list --</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. Okay. Is there a difference between a 19 wait list and an appointment list?</b></p> <p>20 A. At this point in the discussions with 21 the court a -- a wait list was not a prominent 22 option being discussed. So those terms are being 23 used rather loosely in this e-mail.</p> <p>24 Since then the idea of a wait list 25 has -- because it's being contemplated in other</p>	<p style="text-align: right;">Page 112</p> <p>1 person can't afford the private counsel for all the 2 cases.</p> <p>3 <b>Q. You mentioned that following that same 4 thought onto the second page of the e-mail, quote 5 (quote as read):</b></p> <p>6 <b>We also mentioned encouraging private 7 counsel to resolve all pending matters 8 for a particular defendant. 9 Do you see that?</b></p> <p>10 A. That's -- that's just another way of 11 saying what I just mentioned.</p> <p>12 <b>Q. Meaning they don't have the option of 13 giving it back to the public defenders office once 14 they are appointed the case. Is that what that 15 means?</b></p> <p>16 A. What it means is a client will have 17 let's say three cases and will hire a private lawyer 18 on one of the three. We would encourage the courts 19 to consider encouraging that private counsel to 20 resolve all three rather than just one out of three.</p> <p>21 <b>Q. I see. Okay. Does the court or the 22 subcommittee discuss what the requirements would be 23 for the private counsel taking on criminal cases?</b></p> <p>24 A. It's a touchy matter because you're 25 interfering with the financial relationship between</p>

28 (Pages 109 to 112)



1 private counsel and the client, so I don't know if  
2 there's a resolution to this, but it's -- it's being  
3 discussed.

4 **Q. What do you mean by your interfering**  
5 **with the financial relationship?**

6 A. The -- the attorney is saying I've only  
7 been paid for one case. You can't force me to work  
8 on these other two cases for free.

9 **Q. So the private counsel are actually**  
10 **getting a fee for doing this?**

11 A. Correct. This has nothing to do with  
12 appointment.

13 **Q. Okay. So this is not a pro bono?**

14 A. No.

15 **Q. Okay.**

16 A. This is the marketplace.

17 **Q. Okay. Has there been talk of having a**  
18 **pro bono requirement for private counsel taking on**  
19 **criminal cases?**

20 A. Not that I know of.

21 **Q. Just quickly on the wait list again,**  
22 **the proposal for having a wait list, even if the**  
23 **defendants would be released and then placed on a**  
24 **wait list, theoretically if this plan goes through**  
25 **what happens or how is their pretrial motions**

1 **affected if they don't have representation?**

2 A. There would be no pretrial motions  
3 while they're on the wait list.

4 **Q. Has this been a concern or topic that's**  
5 **been discussed?**

6 A. People are aware of that problem. I  
7 suppose there's a tradeoff.

8 **Q. Okay. And even if they're released**  
9 **just again on the wait list, is there a talk of**  
10 **certain types of cases that would go on the wait**  
11 **list versus others?**

12 A. Low-level felonies, largely simple  
13 possessions and child support.

14 **Q. Okay. Thank you. Has there ever been**  
15 **a wait list in your district?**

16 A. No.

17 MS. ROSCA: I'm going to have the court  
18 reporter mark a document. Exhibit 44. Reynolds  
19 Exhibit 44.

20 (WHEREIN, Exhibit 44, 10-31-17 e-mail  
21 chain, was marked for identification by the Court  
22 Reporter.)

23 **Q. (By Ms. Rosca) Would you please review**  
24 **the document and let me know when you've reviewed**  
25 **it? I'm also going to introduce Reynolds Exhibit 45**

1 **with that.**

2 **(Court reporter interruption.)**

3 MS. SHIPMA: It's not privileged. This  
4 was -- I asked him to send me this so I could  
5 forward this.

6 MR. MOORE: Okay. I just wanted to  
7 find out that before we started.

8 MS. SHIPMA: Thank you.

9 (WHEREIN, Exhibit 45, MSPD improved  
10 case flow plan, was marked for identification by the  
11 Court Reporter.)

12 **Q. (By Ms. Rosca) Did you have a chance**  
13 **to review Reynolds Exhibit 44?**

14 A. Yes.

15 **Q. Have you seen this document before?**

16 A. I have.

17 **Q. And what is this document?**

18 A. This is another e-mail sent to the  
19 judges who are on the committee for the public  
20 defender issues, prosecutor representative, the  
21 lawyer for the courts or the clerk of court, and  
22 somebody from probation and parole.

23 **Q. Do you see that this e-mail has an**  
24 **attachment that says MSPD improved case flow plan?**

25 A. Yes.

1 **Q. Could you take a look at Reynolds**  
2 **Exhibit 45, which is over here, and tell me if that**  
3 **is the exhibit being referenced in this e-mail?**

4 A. Yes.

5 **Q. Okay. Could you talk a little bit**  
6 **about what this improved docketing proposal is?**

7 A. At the same time Hinkebein appeared the  
8 court was meeting with representatives from the  
9 jail, probation and parole, and the prosecutor's  
10 office about improvements to court processes.

11 And so as part of the conversations in  
12 the beginning there was discussion about whether  
13 improved docketing and court processes would help  
14 the public defender caseload issue. So this e-mail  
15 addresses those concerns and questions and has some  
16 ideas.

17 **Q. In your opinion, if these -- this**  
18 **improved docketing proposal was in effect but your**  
19 **attorneys are still assigned the same number of**  
20 **cases they are and you have not increased the number**  
21 **of attorneys in your office, would it have a**  
22 **significant effect in reducing the caseload in your**  
23 **office?**

24 A. I don't think that it would affect the  
25 caseload. It could affect -- it could create more

<p style="text-align: right;">Page 117</p> <p>1 time for lawyers to address the caseload as it 2 exists now.</p> <p>3 <b>Q. What do you mean that it could create</b> 4 <b>more time to address the caseload as it exists now?</b></p> <p>5 A. A scheduling in St. Louis County is 6 extremely difficult. There are two associate 7 divisions and 13 circuit divisions that handle 8 criminal matters.</p> <p>9 Vertical representation is 10 administratively better and ethically better for the 11 client. But to achieve that our lawyers are in 12 court nearly every day of the week and sometimes 13 both mornings and afternoons.</p> <p>14 If there was a coordinated scheduling 15 and docketing, that would reduce the amount of time 16 that our attorneys are in court and therefore they 17 could devote more time to client communication and 18 case preparation.</p> <p>19 <b>Q. Based on your communications with the</b> 20 <b>judiciary and your circuit court, how likely is this</b> 21 <b>improved docketing system going to be put into</b> 22 <b>effect?</b></p> <p>23 A. It's not going to be put into effect.</p> <p>24 <b>Q. And what is your basis for that</b> 25 <b>conclusion?</b></p>	<p style="text-align: right;">Page 119</p> <p>1 <b>private counsel, there would be a financial issue</b> 2 <b>because they would be paid a fee; is that correct or</b> 3 <b>no?</b></p> <p>4 A. If I said that or implied that, it 5 would be incorrect. I don't know if I said that.</p> <p>6 <b>Q. Well, then let's start again. What --</b> 7 <b>what is the proposed plan for appointments to</b> 8 <b>private counsel? Is it the same as this e-mail?</b></p> <p>9 A. There is no concrete plan. This is an 10 outline of a -- a rough outline of a plan.</p> <p>11 <b>Q. Okay. Can we discuss -- can you</b> 12 <b>discuss what the plan would be?</b></p> <p>13 A. Now or in the e-mail?</p> <p>14 <b>Q. What is the plan now?</b></p> <p>15 A. The judges are considering how to 16 approach the St. Louis County Bar and/or lawyers who 17 live in St. Louis County to talk about the need for 18 private appointments, and then what's under 19 consideration is appointing child support and drug 20 cases.</p> <p>21 <b>Q. And just to be clear, the private</b> 22 <b>appointments would be pro bono on the part of the</b> 23 <b>counsel?</b></p> <p>24 A. Correct.</p> <p>25 <b>Q. Is there currently a pro bono</b></p>
<p style="text-align: right;">Page 118</p> <p>1 A. The judges have said so.</p> <p>2 <b>Q. Okay. So they've decided on this</b> 3 <b>already?</b></p> <p>4 A. Correct.</p> <p>5 <b>Q. Okay. What is the reason why they</b> 6 <b>don't want to put it into effect, did they say?</b></p> <p>7 A. I think there's -- it's too difficult 8 of a task to achieve given the number of 9 stakeholders. So efforts are addressed at the 10 caseload issue as opposed to -- which I said this 11 docketing issue came at the same time as Hinkebein. 12 So that's docketing and court processes are just 13 being pushed to the side.</p> <p>14 <b>Q. This e-mail also lists again the</b> 15 <b>appointments to the private bar. I think it</b> 16 <b>discusses it in a little bit more detail. Do you</b> 17 <b>see that?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. You said before that the private bar</b> 20 <b>would be paid a fee, but then it says here that this</b> 21 <b>could be presented as a pro bono requirement. Is</b> 22 <b>that a consideration now as well?</b></p> <p>23 A. Did I -- I'm sorry, did I reference a 24 fee?</p> <p>25 <b>Q. I thought you said that appointments to</b></p>	<p style="text-align: right;">Page 120</p> <p>1 <b>requirement in the district?</b></p> <p>2 A. No.</p> <p>3 <b>Q. Would the judiciary have to set one?</b></p> <p>4 A. I do not know.</p> <p>5 <b>Q. What about training, has training been</b> 6 <b>discussed for private counsel taking on criminal</b> 7 <b>cases?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And what is the training that will be</b> 10 <b>involved?</b></p> <p>11 A. Specific training would be devised for 12 those types of cases and made available to people 13 who are appointed to those types of cases.</p> <p>14 <b>Q. Is there a screening process as to how</b> 15 <b>the private counsel would be appointed?</b></p> <p>16 A. I -- nothing has reached that point.</p> <p>17 <b>Q. Okay. Currently is the private bar</b> 18 <b>involved in your district to alleviate caseload</b> 19 <b>issues?</b></p> <p>20 A. I would say other than MCRC to the 21 extent that they're involved, no.</p> <p>22 <b>Q. I would actually like to talk about</b> 23 <b>that. I'm going to present you with an exhibit that</b> 24 <b>was previously marked.</b> 25 <b>(Exhibit 6, Previously marked exhibit.)</b></p>

30 (Pages 117 to 120)

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1 Q. (By Ms. Rosca) Mr. Reynolds, this is  
2 an exhibit, Exhibit 6 of the Petsch deposition, from  
3 the Petsch deposition. Have you seen this document  
4 before?

5 A. I've seen something similar to this. I  
6 think I've seen it, it's just not formatting as it  
7 appears on my computer screen.

8 Q. Do you see that on page six of this  
9 exhibit that your name is on the top, Stephen  
10 Reynolds? Page two.

11 A. Yes.

12 Q. Okay. Why are you listed on this --  
13 well, strike that.

14 What is this exhibit?

15 A. This appears to be a copy of the  
16 electronic notification from the Missouri State  
17 Public Defender to an attorney participating in the  
18 MCRC program. And if a case is originating out of  
19 my office, I am listed as the contact person.

20 Q. And can you describe what the MCRC  
21 program provides?

22 A. It is a group of firms that have come  
23 together and volunteered to take cases that are  
24 likely to go to trial.

25 Q. So do they come in after the case has

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1 presentation?

2 A. Sometime over the summer.

3 Q. And when did this program begin?

4 A. Late spring, early summer.

5 Q. Of this year?

6 A. Yeah.

7 Q. And how many cases from your office  
8 have gone to the MCRC?

9 A. Five. Five to ten. I don't know the  
10 exact number. Somewhere in that range.

11 Q. How long are the trainings for the  
12 private counsel taking on these cases?

13 A. The training that was in St. Louis, my  
14 understanding was that it was two days. I believe  
15 there's been a training in Kansas City, but I wasn't  
16 part of that.

17 Q. Are the trials that the MCRC private  
18 counsel taking, are they for violent cases?

19 A. They are -- we have offered a variety  
20 of cases from low-level felonies to high-level  
21 felonies.

22 Q. Okay. So it's possible then for a  
23 high-level felony case, a violent high-level felony  
24 case to be assigned to the MCRC private counsel?

25 A. Yes.

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1 already been commenced or initiated?

2 A. To date that is how the program has  
3 worked in our office.

4 Q. And how do these private counsel  
5 receive training to handle those types of cases?

6 A. Yes. That's my understanding.

7 Q. And how -- how do they get the  
8 training?

9 A. I believe that there's been specialized  
10 training events, two to date, and interested  
11 volunteers are required to attend those trainings  
12 before taking cases is my understanding.

13 Q. And who runs the trainings, does the  
14 MSPD run them?

15 A. Yes. That's my understanding.

16 Q. Has your district office at all been  
17 involved in running the training programs?

18 A. A little bit.

19 Q. How have they been involved?

20 A. I gave an introductory presentation and  
21 I believe at the next training the deputy district  
22 defender is one of the scheduled trainers that's  
23 going to do in-depth training to whatever extent  
24 that is for that program.

25 Q. When did you give the introductory

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1 Q. But they only receive two days of  
2 training to take on that trial; is that correct?

3 A. I don't know what training the lawyers  
4 have in addition to the public defender training.

5 Q. Do they have to be criminal attorneys  
6 to be participating in this program?

7 A. I don't know.

8 Q. Okay. You can put that aside. Just --  
9 just going back to the e-mail with the various  
10 proposals and the appointments to the private bar, I  
11 think it's Exhibit 44, did the committee or the  
12 judges discuss sort of the list of private counsel  
13 that they would choose from to make these  
14 appointments?

15 A. I think that's one of the issues that  
16 they are trying to resolve is how to generate that  
17 list.

18 Q. Okay. And what about you said that it  
19 would be pro bono for the attorney. What about the  
20 expenses associated with handling a case like  
21 depositions or getting experts, did they discuss who  
22 would be funding that aspect of it?

23 A. My understanding is that the public  
24 defender would fund those --

25 Q. Okay.

31 (Pages 121 to 124)

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1 A. -- costs, and that's based upon Michael  
2 Barrett telling the judges that during some point in  
3 the discussions.  
4 **Q. And is there a discussion about whether**  
5 **the attorneys can refuse the appointment?**  
6 A. The appointment process is not that far  
7 down.  
8 **Q. Okay.**  
9 A. It's in the generative stages. It's a  
10 serious intended commitment, but no details have  
11 been worked out.  
12 **Q. Okay. And I'm just going to keep**  
13 **asking questions about it --**  
14 A. Right.  
15 **Q. -- just to know the scope. Is there**  
16 **any discussion about the oversight of the private**  
17 **counsel on the part of the MSPD?**  
18 A. Not to date.  
19 **Q. Is that something that is being**  
20 **considered by the judiciary or by the MSPD?**  
21 A. I don't know.  
22 **Q. Are there -- are you aware of any other**  
23 **districts that are doing this, that are appointing**  
24 **private counsel to reduce caseload?**  
25 A. I'm aware that at one point the

1 **be done at the meeting? What other work is involved**  
2 **in this process?**  
3 A. Talking to judges about formulating a  
4 plan and then being able to present it at a meeting  
5 for other judges to consider and then how to  
6 approach the private bar, talking about just the  
7 logistics and the administrative necessities of a  
8 wait list. You know, the details of these -- both  
9 proposals can be worked out without having an  
10 official meeting.  
11 **Q. You mentioned how to approach the**  
12 **private bar. Have you had any discussions from the**  
13 **private bar about this issue?**  
14 A. Judge Kerr met with MCRC.  
15 **Q. And do you know what the discussion**  
16 **involved in that meeting?**  
17 A. Yes.  
18 **Q. What did they talk about?**  
19 A. Judge Kerr was inquiring whether MCRC  
20 could be a vehicle for large-scale appointments.  
21 **Q. And what was the response by the**  
22 **private bar?**  
23 A. The representative of the MCRC said  
24 that that organization was not created to take  
25 large-scale appointments.

1 Columbia office, I don't know which county, there  
2 were appointments. I don't know if those are still  
3 continuing. I'm aware that the Harrisonville office  
4 at one point there were appointments, but I don't  
5 know if that's still continuing.  
6 **Q. And are you aware if -- for the offices**  
7 **that did participate in having appointments, was it**  
8 **successful in reducing their caseload?**  
9 A. I don't know.  
10 **Q. Okay. When is your next follow-up**  
11 **communication with the judiciary or the**  
12 **subcommittee?**  
13 A. It was to be today, but I'm taking a  
14 deposition.  
15 **Q. Understandable. Is it being**  
16 **rescheduled?**  
17 A. It will be.  
18 **Q. You said how frequently do you -- does**  
19 **this committee meet?**  
20 A. The committee itself is not meeting  
21 until January, but I am in frequent communication  
22 with judges on the committee. So work can be  
23 done -- you know, work doesn't necessarily have to  
24 be done at the meeting.  
25 **Q. What do you mean work doesn't have to**

1 MS. ROSCA: So I'm going to have the  
2 court reporter mark this Exhibit 46, Reynolds  
3 Exhibit 46. Can you please review this document and  
4 let me know when you have finished reviewing it?  
5 (WHEREIN, Exhibit 46, 11-20-17  
6 McCulloch letter to Reynolds, was marked for  
7 identification by the Court Reporter.)  
8 A. I recognize it.  
9 **Q. (By Ms. Rosca) What is this document?**  
10 A. It is a letter sent to me by Robert  
11 McCulloch of the St. Louis County Prosecuting  
12 Attorney.  
13 **Q. Just for the record, it is dated**  
14 **November 20th, 2017, correct?**  
15 A. Yes.  
16 **Q. And why is the Office of Prosecuting**  
17 **Attorney sending you this letter?**  
18 A. You'd have to ask Mr. McCulloch.  
19 **Q. It says on the first line that this is**  
20 **a follow-up on our discussions with the circuit**  
21 **court. Was he present at those subcommittee**  
22 **meetings?**  
23 A. He was present I believe at the first  
24 one.  
25 **Q. Okay. And did he provide any**

1 statements at that first meeting?

2 A. He did.

3 **Q. What did he say?**

4 A. He suggested that the court appoint the  
5 private bar as the court back in 1980 did, which  
6 resulted in the creation of an improved public  
7 defender system.

8 **Q. Do you agree with that alternative?**

9 A. Under the circumstances I think that is  
10 a good suggestion because he also pointed out that  
11 the appointments to the private bar resulted in the  
12 private bar speaking directly with the legislature  
13 for improved funding of a public defender system.

14 **Q. Just so I understand, you're saying**  
15 **that appointments to the private bar would prompt**  
16 **more discussions or -- yeah, would prompt more**  
17 **discussions with the legislature for funding for the**  
18 **MSPD?**

19 A. That is what he suggested.

20 **Q. Do you have any concerns about**  
21 **appointing private counsel to these criminal cases?**

22 A. Meaning?

23 **Q. Do you think that they would have the**  
24 **sufficient experience that your attorneys have at**  
25 **your office, do you think that there's any issues**

1 with the client relationship having private counsel  
2 appointed to them, just any concerns generally by  
3 having them represent the clients versus your  
4 office?

5 A. I mean --

6 MR. MOORE: Just real quick I'll object  
7 to the form. I feel like it's leading, also kind of  
8 vague. Go ahead.

9 **Q. (By Ms. Rosca) Strike that. I'll**  
10 **rephrase.**

11 **Do you have any concerns that**  
12 **private -- or appointment of private counsel would**  
13 **be less effective than attorneys representing**  
14 **clients in these criminal cases?**

15 A. If I'm trying to understand your  
16 question, and correct me if I'm wrong, you're asking  
17 me will the appointment of private counsel  
18 jeopardize the quality of representation for a given  
19 client.

20 **Q. Yes. I'm specifically thinking of a**  
21 **situation where a civil attorney who doesn't handle**  
22 **criminal matters is now appointed a criminal case**  
23 **and how effective they would be in representation.**

24 A. That could be an issue.

25 **Q. Is that something that the judges are**

1 considering at all?

2 A. You would have to ask them.

3 MR. MOORE: Okay.

4 A. But I'm sure it's an issue.

5 **Q. (By Ms. Rosca) Can we go back to this**  
6 **exhibit with the letter from the prosecution --**  
7 **prosecutor's office?**

8 A. Yes.

9 **Q. Since that first meeting where he was**  
10 **present, has he or anyone in his office been**  
11 **involved in these discussions with the judiciary and**  
12 **your office?**

13 A. There was a meeting in the last week of  
14 November where two representatives of his office  
15 appeared.

16 **Q. Based on your observations from the**  
17 **meeting and what if anything they have stated, have**  
18 **they been amenable to trying to help resolve the**  
19 **caseload issue for this district?**

20 A. I can only interpret what I -- I can  
21 only interpret their actions. I can't -- I don't  
22 know exactly what their thoughts are, but they have  
23 expressed through Bob McCulloch and his idea for  
24 appointment of the private bar that they recognize  
25 that there is a caseload problem.

1 **Q. So in particular in this letter he**  
2 **offers another proposal it seems like in addition to**  
3 **just the private bar. He says (quote as read):**

4 **You select one deputy defender and**  
5 **provide this office with a list of all**  
6 **pending cases assigned to that deputy**  
7 **and we will pull the files, make**  
8 **certain all discovery has been**  
9 **provided.**

10 **Do you see that?**

11 A. Yes.

12 **Q. What is your opinion of this suggestion**  
13 **by the prosecutor's office?**

14 A. Operationally I don't think that this  
15 is going to help the caseload issue.

16 **Q. And why not?**

17 A. C, D, and E felonies already move  
18 through our office in less than a hundred days. The  
19 time to disposition does not solve the number of  
20 cases in our office.

21 **Q. Just because you're receiving so many**  
22 **C, D, and E cases that it doesn't matter how quickly**  
23 **they're resolved. Is that why?**

24 A. This letter suggests that moving cases  
25 more quickly will solve caseload problems. Our

1 office already moves cases extremely quickly.

2 **Q. But not quickly on the serious and**  
3 **violent felonies, correct?**

4 A. Those aren't going to move quickly  
5 regardless.

6 **Q. Okay.**

7 A. This letter is referencing low-level  
8 easily resolved cases.

9 **Q. Okay.**

10 A. Those cases are already moving under a  
11 hundred days.

12 **Q. So just so I'm clear, this suggestion**  
13 **would not reduce the caseload problem in your**  
14 **office?**

15 A. Correct.

16 **Q. Has the prosecutor's office provided**  
17 **any other suggestions to reduce the caseload issue**  
18 **aside from what has been suggested in this letter**  
19 **and the private appointment of counsel suggestion?**

20 A. I believe those are the two suggestions  
21 that they've had.

22 **Q. Are you aware of other districts that**  
23 **have been working with prosecutors' offices to**  
24 **reduce caseload issues in their offices?**

25 A. No.

1 **its own; is that correct?**

2 A. Correct.

3 **Q. And now you've just testified again and**  
4 **clarified that the private appointments plan being**  
5 **contemplated by the judiciary circuit will not**  
6 **reduce caseload issues on its own; is that correct?**

7 A. It is highly unlikely to do so, yes.

8 **Q. And so what would be the solution to**  
9 **reducing the caseload issue in your office?**

10 A. The easiest and best solution is to  
11 hire more public defenders.

12 **Q. Okay. Thank you. Can we just go back**  
13 **and talk about just the turnover rate in your**  
14 **office? How many attorneys have you hired this**  
15 **year?**

16 A. I'm going to say five to seven.

17 **Q. Out of the 20?**

18 A. Yes.

19 **Q. So does that mean that five to seven**  
20 **prior attorneys left last year?**

21 A. Correct.

22 **Q. Is that on average what the turnover**  
23 **rate is per year since you've been a district**  
24 **defender?**

25 A. I would have to access those

1 MS. ROSCA: Can we take a ten-minute  
2 break? Thanks.

3 VIDEOGRAPHER: The time is 4:47. We  
4 are off the record.

5 (WHEREIN, a recess was taken.)

6 VIDEOGRAPHER: The time is 4:54. We  
7 are back on the record.

8 **Q. (By Ms. Rosca) Mr. Reynolds, just to**  
9 **tie up the questioning about the subcommittee and**  
10 **the judiciary meetings that you've had, just to be**  
11 **clear, even if the judiciary in your circuit went**  
12 **with private appointments, would that alone reduce**  
13 **the caseload issues in your office absent adding new**  
14 **attorneys to your office?**

15 A. Highly unlikely.

16 **Q. Why do you say that?**

17 A. The amount of cases needed to be  
18 offloaded we estimate between 500 and a thousand  
19 just to get our lawyers below a hundred cases. To  
20 appoint that many cases would be exceedingly  
21 difficult even if you had a cooperative, willing  
22 private bar.

23 **Q. So you testified earlier that the**  
24 **prosecutor's suggestion in the letter that was sent**  
25 **to you was not going to reduce the caseload issue on**

1 statistics, which are not -- in views that I have  
2 are not tabulated automatically. It's a hand count,  
3 but I would say turnover has increased in the past  
4 four years.

5 **Q. And why do you think there is such a**  
6 **high turnover rate or why -- strike that.**

7 **Why do you think turnover rate has**  
8 **increased in the past four years?**

9 A. My view would be high caseloads, low  
10 pay, an extremely difficult job that very few people  
11 are suited to do, have the qualifications and the  
12 aptitude to do. I would say that public defender  
13 jobs, the skill level is highly underestimated what  
14 it takes to be successful and also to be able to  
15 practice over the long term.

16 **Q. Of the five to seven you've hired this**  
17 **year, what is their experience level with respect to**  
18 **representing indigent clients?**

19 A. Three had no experience. Two -- one  
20 had ten years' experience, one had five to  
21 seven years' experience. The other hire that we had  
22 that puts us in this five to seven range was a  
23 transfer from a rural jurisdiction with two years'  
24 experience who only lasted in our office for six  
25 months.



1 **Q. She left already?**  
2 A. It was a man. He left.  
3 **Q. Oh, he left already?**  
4 A. He left within six months.  
5 **Q. Why did he leave?**  
6 A. You would have to ask him.  
7 **Q. Okay. You don't do like a post -- like**  
8 **a post discussion after they give their notice as**  
9 **to --**  
10 A. Human resources conducts --  
11 **Q. Okay.**  
12 A. -- that interview.  
13 **Q. Okay.**  
14 A. What I think is what I think.  
15 **Q. What do you think?**  
16 A. I don't think he could handle the  
17 caseload and I don't think he liked the job.  
18 **Q. Of the -- the ones that had, you know,**  
19 **ten years' experience, five to seven years'**  
20 **experience, is this experience with the public**  
21 **defenders office?**  
22 A. Those two, yes.  
23 **Q. Okay. And then the three that had no**  
24 **experience, what are their backgrounds?**  
25 A. One is a recent law grad from Fordham

1 University who really wanted to do trial work and  
2 did a national job search. One is a recent graduate  
3 of Suffolk University and was similarly positioned,  
4 wanted to do trial work, wanted to work for the  
5 public defender and did a national job search.  
6 The other was working with a sole  
7 practitioner for maybe a year or so after graduation  
8 from law school. We considered based upon his  
9 interview that his experience, although we're  
10 fortunate that he had a job, was really not  
11 substantial in any way.  
12 **Q. Okay. Would you say -- you said that**  
13 **you don't know the specific, but generally would it**  
14 **be less than five that would leave per year or more**  
15 **than five?**  
16 A. I think the trend is towards the  
17 numbers I described for the past 12 months.  
18 **Q. Which is five to seven?**  
19 A. Yes.  
20 **Q. Okay. Thank you. Traveling, I just**  
21 **want to talk about how much time the attorneys in**  
22 **your office travel for their cases?**  
23 A. Currently, other than investigation,  
24 very little. All of our lawyers have cases in  
25 St. Louis County, but for one who is finishing up a

1 conflicts assignment in the city of St. Louis and  
2 that's just left over from when conflicts have been  
3 contracted out. He still has a conflict caseload.  
4 **Q. Can you talk a little bit about**  
5 **conflict cases? When -- when did it get start --**  
6 **when did it get contracted out?**  
7 A. The beginning of this fiscal year.  
8 **Q. And what were -- what was your office**  
9 **doing prior to that?**  
10 A. We were doing first-level conflicts  
11 in -- from St. Louis City, and I believe -- I don't  
12 know if it was first or second level from  
13 St. Charles.  
14 **Q. So could you explain, you know, how the**  
15 **attorney -- prior to it being contracted out, how**  
16 **the attorney was assigned a conflicts case?**  
17 A. We had one attorney assigned to do the  
18 conflicts cases in the city of St. Louis. Normally  
19 we would have two. Because we knew that the  
20 contract money was likely to be forthcoming in  
21 December of last year, that particular attorney  
22 volunteered to take all of the city conflict cases,  
23 which were lower in number than the St. Louis County  
24 cases per attorney, but required more work and more  
25 preparation for trial because St. Louis City is a

1 trial-rich environment. And then the St. Charles  
2 County cases we would assign as they came in to the  
3 lawyer that was best suited to handle it.  
4 **Q. So just so I understand, there was one**  
5 **designated -- one attorney designated for conflict**  
6 **cases stemming out of the city of St. Louis; is that**  
7 **correct?**  
8 A. For the past year.  
9 **Q. For the past year. And then prior to**  
10 **that how were the conflict cases from St. Louis**  
11 **being apportioned?**  
12 A. There were two attorneys doing city of  
13 St. Louis conflict cases prior to then.  
14 **Q. And then the only other conflict cases**  
15 **you receive was from St. Charles; is that correct?**  
16 A. Correct.  
17 **Q. Okay.**  
18 A. In the -- in the past two to  
19 three years.  
20 **Q. Past two to three. And then that would**  
21 **be apportioned out to everyone?**  
22 A. Those numbers were quite small. I  
23 think it was probably less than 20 cases a year. So  
24 we would find the person best suited to handle that  
25 case given their caseload.



<p style="text-align: right;">Page 141</p> <p>1 <b>Q. And then can you just describe what you</b>  2 <b>mean by the conflict cases being contracted out in</b>  3 <b>the beginning of this year?</b>  4 A. The legislature apportioned money for  5 all conflict cases to be contracted out through a  6 centralized contracting office in Columbia, Missouri  7 run by the public defender.  8 <b>Q. Has that decision significantly</b>  9 <b>impacted caseload issues for your office?</b>  10 A. At some point in the next six months we  11 will be able to reassign our one conflicts attorney  12 to take a St. Louis County caseload.  13 <b>Q. So it only really affected that one</b>  14 <b>attorney?</b>  15 A. We will gain the equivalent of one FTE  16 to devote to the St. Louis County caseload. As soon  17 as that attorney's caseload is reduced enough to  18 make the transfer.  19 <b>Q. And when -- prior to the contracting</b>  20 <b>out of these cases, were the two designated</b>  21 <b>St. Louis City attorneys also handling cases that</b>  22 <b>were not conflict cases at all?</b>  23 A. No. They were entirely dedicated to  24 city of St. Louis conflict cases.  25 <b>Q. But the ones that were handling the</b></p>	<p style="text-align: right;">Page 143</p> <p>1 negotiated with the individual prosecutor who has  2 wide discretion.  3 <b>Q. And how much time do the attorneys in</b>  4 <b>your office spend negotiating plea deals?</b>  5 A. Meaning?  6 <b>Q. Meaning for one case, for example, what</b>  7 <b>percentage of their time is spent negotiating a plea</b>  8 <b>deal?</b>  9 A. I mean, the reason I'm hesitating is  10 you could count that as minutes spent on the phone,  11 in court, and add it up, or you could count it as  12 what work the lawyer is putting into the case to  13 then present information to the prosecutor to  14 achieve a better negotiated result. I don't know  15 which measurement you're asking.  16 <b>Q. Could you combine the two, just in</b>  17 <b>general?</b>  18 A. It would depend on the case then.  19 <b>Q. What about for nonhomicide cases, like</b>  20 <b>C, D felonies?</b>  21 A. I mean, the reason I'm hesitating is if  22 -- if the client in a particular case and there's  23 not much negotiation to take place, there -- it can  24 be very quick. If it's -- even if it's a low-level  25 case and the lawyer has been working up the case and</p>
<p style="text-align: right;">Page 142</p> <p>1 <b>St. Charles cases also had additional nonconflict</b>  2 <b>cases they were handling?</b>  3 A. Other than one or two cases their  4 caseload would be all St. Louis County cases.  5 <b>Q. Oh, I mean the St. Charles?</b>  6 A. Correct.  7 <b>Q. Oh, okay. They would be -- they would</b>  8 <b>do both?</b>  9 A. So -- yes.  10 <b>Q. Okay.</b>  11 A. The St. Charles numbers, we only got  12 ten to 20 of those cases a year. The numbers were  13 quite low.  14 <b>Q. Okay.</b>  15 A. So somebody in St. Louis County would  16 be handling 150 cases and then they would have one  17 St. Charles case.  18 <b>Q. Got it. Thank you. Just guilty pleas,</b>  19 <b>do you -- do you guys have plea negotiations --</b>  20 A. Yes.  21 <b>Q. -- in your district? Okay. Can you</b>  22 <b>just talk about how that works?</b>  23 A. The prosecutor's office delegates a  24 considerable amount of authority to the individual  25 prosecutor to negotiate the case. So each case is</p>	<p style="text-align: right;">Page 144</p> <p>1 talking to the prosecutor over a period of months,  2 it can be hours. I mean, it really varies on the  3 case.  4 <b>Q. So the ones that you testified earlier</b>  5 <b>that were being completed in a hundred days, were</b>  6 <b>those C, D felonies?</b>  7 A. Those were C, D's and E's.  8 <b>Q. Okay. Would those negotiations be much</b>  9 <b>quicker then?</b>  10 A. Some of them can be. Some of them can  11 be extended also.  12 <b>Q. Okay. And then I assume the ones that</b>  13 <b>are the more serious violent offenses, they're</b>  14 <b>longer times spent on negotiations?</b>  15 A. Yes. Those negotiations often persist  16 up until you're picking a jury.  17 <b>Q. Now, you testified earlier that the</b>  18 <b>reason why because of the flow of the C, D felony</b>  19 <b>cases and how expedited the dispositions of those</b>  20 <b>cases are, not a lot of time is spent on the serious</b>  21 <b>violent cases; is that correct?</b>  22 A. Correct.  23 <b>Q. Does that include time spent with</b>  24 <b>negotiation of plea deals with the prosecutor's</b>  25 <b>office?</b></p>

36 (Pages 141 to 144)

<p style="text-align: right;">Page 145</p> <p>1 A. You could put that in there.</p> <p>2 <b>Q. Okay. And do you know of an instance</b></p> <p>3 <b>where that has been the case for one of your</b></p> <p>4 <b>attorneys?</b></p> <p>5 A. Meaning?</p> <p>6 <b>Q. Meaning they did not have enough time</b></p> <p>7 <b>to negotiate a plea deal with the prosecutor's</b></p> <p>8 <b>office for a serious violent offense because they</b></p> <p>9 <b>had too much on their plate?</b></p> <p>10 A. I think the problem is the attorney has</p> <p>11 not investigated and litigated the serious case to</p> <p>12 have a better negotiating position. Not that they</p> <p>13 don't have time to negotiate. One can negotiate</p> <p>14 with a prosecutor quite easily, but if you're not</p> <p>15 bringing anything to the table, the negotiations are</p> <p>16 not maximized for the client.</p> <p>17 <b>Q. So just so I understand, the issue then</b></p> <p>18 <b>is that the time it takes to research and work on</b></p> <p>19 <b>the case in preparation for the negotiation of the</b></p> <p>20 <b>prosecutor's office; is that correct?</b></p> <p>21 A. Correct.</p> <p>22 <b>Q. And do you think that the clients would</b></p> <p>23 <b>be benefited if the attorney had more time to</b></p> <p>24 <b>research and investigate in preparation of these</b></p> <p>25 <b>plea -- plea deal negotiations?</b></p>	<p style="text-align: right;">Page 147</p> <p>1 A. Negotiations have to originate with a</p> <p>2 client.</p> <p>3 <b>Q. Meaning that they would have to request</b></p> <p>4 <b>it?</b></p> <p>5 A. Meaning like in any attorney-client</p> <p>6 relationship the client makes the primary</p> <p>7 fundamental decisions, including whether or not the</p> <p>8 client wants to negotiate and what the parameters of</p> <p>9 the negotiation will be.</p> <p>10 <b>Q. And for -- you testified earlier that</b></p> <p>11 <b>there are instances where there is no client</b></p> <p>12 <b>communication for nine months for these serious</b></p> <p>13 <b>cases. Would that affect whether they -- the client</b></p> <p>14 <b>has enough information to make a decision about plea</b></p> <p>15 <b>negotiations?</b></p> <p>16 A. It can.</p> <p>17 <b>Q. What do you mean by it can? Do you</b></p> <p>18 <b>know of an instance where this has occurred in your</b></p> <p>19 <b>office?</b></p> <p>20 A. Well, I would -- I would imagine if a</p> <p>21 client has not been met for that period that they</p> <p>22 are not fully knowledgeable about the case and it</p> <p>23 could affect their thoughts about how to proceed and</p> <p>24 they've not had enough time to meet with a lawyer,</p> <p>25 collaborate with a lawyer and figure out a case</p>
<p style="text-align: right;">Page 146</p> <p>1 A. Yes.</p> <p>2 MR. MOORE: Object to form, calls for</p> <p>3 speculation, but it's on the record.</p> <p>4 <b>Q. (By Ms. Rosca) What is your basis for</b></p> <p>5 <b>thinking that?</b></p> <p>6 A. What is my basis for thinking that?</p> <p>7 <b>Q. Yes.</b></p> <p>8 A. Concerns that the lawyers have</p> <p>9 expressed to me when I'm reviewing cases because of</p> <p>10 client complaints or promotions. You know, I notice</p> <p>11 that some cases need to be worked on more.</p> <p>12 <b>Q. Can we sort of quantify or qualify what</b></p> <p>13 <b>the serious cases are that's not getting the</b></p> <p>14 <b>attention in terms of time that your attorneys can</b></p> <p>15 <b>provide to these cases? Does this include felony</b></p> <p>16 <b>sex offenses?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. And then homicides I assume?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. And what other types of cases that I</b></p> <p>21 <b>haven't mentioned would it include?</b></p> <p>22 A. Robberies and assaults.</p> <p>23 <b>Q. Okay. How much -- you have to then</b></p> <p>24 <b>communicate with a client prior to negotiating with</b></p> <p>25 <b>a prosecutor over a plea deal?</b></p>	<p style="text-align: right;">Page 148</p> <p>1 plan, whether it be trial or negotiation or</p> <p>2 preparation for trial to advance a better</p> <p>3 negotiating position. Obviously none of that has</p> <p>4 taken place.</p> <p>5 <b>Q. If a client has been detained or</b></p> <p>6 <b>confined for a period of time and -- could they</b></p> <p>7 <b>request a plea deal even before the attorney has had</b></p> <p>8 <b>time to adequately investigate and prepare for a</b></p> <p>9 <b>plea -- plea deal negotiations?</b></p> <p>10 A. I'm not understanding the question.</p> <p>11 <b>Q. You said -- you testified earlier that</b></p> <p>12 <b>the client has to be the one to initiate whether</b></p> <p>13 <b>they want to engage in plea deal negotiations; is</b></p> <p>14 <b>that correct?</b></p> <p>15 A. Correct.</p> <p>16 <b>Q. Is there an instance where they</b></p> <p>17 <b>requested to accept a plea deal even before the</b></p> <p>18 <b>attorney working on the case has had adequate time</b></p> <p>19 <b>to -- to research and investigate whether that was a</b></p> <p>20 <b>sufficient offer on the table by the prosecutor's</b></p> <p>21 <b>office?</b></p> <p>22 A. I think the way this actually works is</p> <p>23 clients who have not met with their lawyer have</p> <p>24 serious concerns and express, hey, I need to meet</p> <p>25 with my lawyer, nothing's been done on my case, and</p>

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<p style="text-align: right;">Page 149</p> <p>1 it's usually those expressions of concern which are 2 legitimate are usually directed at investigating the 3 case. 4 It is very rare for a client to say I 5 just want to plead. My lawyer won't let me into 6 court and plead. I mean, I just haven't encountered 7 that unless somebody is seriously mentally ill. 8 <b>Q. I guess my question is a little</b> 9 <b>different. Has there been a situation where a</b> 10 <b>client has been in custody and to get out of custody</b> 11 <b>faster has just opted to take a plea deal even</b> 12 <b>before the attorney has had adequate time to</b> 13 <b>research and investigate whether that would be the</b> 14 <b>best solution for that client?</b> 15 A. Yes. 16 <b>Q. And how often do you think that occurs</b> 17 <b>in your office?</b> 18 A. Lawyers have reported that it happens 19 with enough frequency that they are personally 20 concerned about that phenomena. 21 <b>Q. Do you think that the lawyers'</b> 22 <b>inability to attend to researching the scope of a</b> 23 <b>plea deal or a negotiation impacts the time at which</b> 24 <b>the client requests to just plead guilty to get out</b> 25 <b>of custody?</b></p>	<p style="text-align: right;">Page 151</p> <p>1 lawyer to be present at those lineups. We have not 2 been contacted to appear at those lineups. Were we 3 contacted, we would appear at those lineups. 4 <b>Q. If you are contacted to appear at those</b> 5 <b>lineups, how would that affect the time that your</b> 6 <b>attorneys spend on cases?</b> 7 MR. MOORE: This calls for speculation. 8 Go ahead. 9 A. Unknown because in eight years we have 10 not received such a call. 11 <b>Q. (By Ms. Rosca) Does your attorneys</b> 12 <b>make any psychiatric evaluations when determining</b> 13 <b>client's competency?</b> 14 A. Yes. 15 <b>Q. How does that process work?</b> 16 A. When a attorney learns or suspects that 17 there's a serious mental illness that affects 18 competence, the policy, even though it's not written 19 but it's clearly communicated to the lawyers, it's 20 better to investigate competency even if you're in 21 doubt, and the preference is to investigate it 22 through a private evaluation. Not always. So they 23 will contact a psychiatrist, make an E request, and 24 I will approve it and submit it to Columbia. 25 <b>Q. Do these competency determinations ever</b></p>
<p style="text-align: right;">Page 150</p> <p>1 MR. MOORE: Object to the form. I 2 think it's vague. Also I think it might be leading 3 and calls for speculation, but you can go ahead. 4 A. Yes. 5 <b>Q. (By Ms. Rosca) Do you have an instance</b> 6 <b>in mind where this has occurred with one of your</b> 7 <b>attorneys?</b> 8 A. I think I mentioned it's probably the 9 same example, but in the past month when we've been 10 discussing caseload numbers and the Hinkebein 11 problem, several lawyers have mentioned this to me 12 as being a problem. 13 <b>Q. Okay. Does the attorneys in your</b> 14 <b>office attend lineups for their clients?</b> 15 A. No. 16 <b>Q. So your clients are in these lineups</b> 17 <b>without representation?</b> 18 A. Yes. 19 <b>Q. Does that strike you as a concern?</b> 20 A. I need to give a long answer to this. 21 <b>Q. Please.</b> 22 A. So certainly there are physical lineups 23 conducted in the jail, and the police in many of 24 these instances are following the Constitution, 25 informing the client that they have a right to a</p>	<p style="text-align: right;">Page 152</p> <p>1 <b>go to court?</b> 2 A. Yes. 3 <b>Q. Are the attorneys in your office</b> 4 <b>present during these competency evaluations?</b> 5 A. When I answered yes the competency 6 evaluations go to court, meaning, you know, the 7 result of the evaluation will be dealt with in 8 court. Lawyers are generally not present during the 9 competency evaluation. 10 <b>Q. Is there a reason for that? Strike</b> 11 <b>that.</b> 12 <b>Are the -- the competency evaluations</b> 13 <b>are not done in court?</b> 14 A. No, they're -- either the private 15 evaluation, the evaluator will go to the jail and 16 conduct the evaluation in the jail. If the client 17 is released, the client will go to the office of the 18 evaluator. 19 In some instances where we are going 20 through the Department of Mental Health first, and 21 those are carefully screened, the person is 22 transported to the Department of Mental Health for 23 the evaluation. 24 <b>Q. Do your clients ever participate in</b> 25 <b>interviews for presentence investigation reports?</b></p>

38 (Pages 149 to 152)

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1 A. In our jurisdiction we try to avoid  
2 what are called sentencing assessment reports, and  
3 that's -- that's what you're referring to because  
4 they're usually unhelpful for our clients. And if  
5 we're in a situation where a judge is requesting it,  
6 we try to do our own mitigation case to counteract  
7 the sentencing assessment report.

8 **Q. Your attorneys attend voir dire, I**  
9 **assume?**

10 A. Yes.

11 **Q. Do you know of an instance where any**  
12 **attorney in your office has ever waived a voir dire?**

13 A. No.

14 **Q. Is there any instance where they've**  
15 **skipped a voir dire?**

16 A. That would never happen.

17 **Q. Why is that?**

18 A. Because we monitor the trials, and  
19 every lawyer in the Missouri State Public Defender  
20 knows that in a jury trial voir dire is one of the  
21 most important parts. It would be inconceivable  
22 that anybody would do that. I don't think they'd be  
23 employed if they did.

24 **Q. That's fair. At the moment given that**  
25 **we've discussed that you have an ethical duty under**

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1 file the 600 motion and it's been rejected on  
2 trivialities.

3 **Q. And you said that if it gets to that**  
4 **point your office is willing to do that as well?**

5 A. Right. But we don't want it to be a  
6 dead end. We just don't want to file a motion, go  
7 through a needless hearing and have no relief. Why  
8 not talk to judges and even though the relief may be  
9 imperfect as you've pointed out in this deposition,  
10 it's better than anything to date.

11 **Q. And just to be clear, the relief is**  
12 **dependent on how amenable the judges are in speaking**  
13 **with the public defenders office with respect to the**  
14 **caseload issue?**

15 A. Well, the relief on the horizon is  
16 private appointments and a wait list, which has  
17 never happened before in Missouri. It's an  
18 imperfect solution, but it's -- it's a step in the  
19 right direction. And why shut down that possibility  
20 by filing a motion tomorrow.

21 **Q. And you've testified that the private**  
22 **appointments and wait lists, even if they went**  
23 **forward, would not have a significant impact on**  
24 **reducing the caseload issue for your office if no**  
25 **other attorneys were added to your office?**

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1 **the rules as a manager to report -- or ensure that**  
2 **your attorneys are complying with the ethical**  
3 **standards, are there any attorneys in your office**  
4 **that are not complying with those standards?**

5 A. I mean, I think given the caseload, all  
6 of our lawyers, their caseloads are unethical. We  
7 have decided rather than to litigate to try to work  
8 with the courts to resolve these issues. I think if  
9 we had just decided to litigate no productive  
10 discussions would have resulted.

11 **Q. And by that answer have you filed any**  
12 **formal motion to the court with respect to**  
13 **withdrawing as -- as representation or not accepting**  
14 **any more representation?**

15 A. Not to date because we're in the middle  
16 of discussions. We don't want to end up like some  
17 of the other jurisdictions. Now, if it gets to that  
18 we'll do it, but at this point we're not there.

19 **Q. What do you mean by some of the other**  
20 **jurisdictions?**

21 A. Kansas City.

22 **Q. Can you explain what has happened there**  
23 **that you've been aware about?**

24 A. It's been very hostile from the bench  
25 and I've -- my understanding is they've attempted to

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1 MR. MOORE: Again, calls for  
2 speculation, but go ahead.

3 A. I mean conceivably, yeah. I mean, it's  
4 a lot of cases to offload.

5 **Q. (By Ms. Rosca) Okay.**

6 A. And it's as you've pointed out, the  
7 wait list is -- is an imperfect solution to people's  
8 rights under the Constitution, whether it's speedy  
9 trial or due process.

10 MS. ROSCA: Okay.

11 MR. MAUNE: That's it.

12 MS. ROSCA: That is it for me. I'm  
13 passing the witness.

14 EXAMINATION

15 QUESTIONS BY MR. MOORE:

16 **Q. Very good. My name is Justin Moore.**  
17 **I'm with the Attorney General's Office. I'm here on**  
18 **behalf of the State of Missouri and Governor**  
19 **Greitens. I'd like to ask some follow-up questions.**

20 **Okay. So just going to backfill a**  
21 **little bit here. Tell me a little bit about your**  
22 **educational background. Where did you go to school,**  
23 **starting with undergrad?**

24 A. Bowdoin College.

25 **Q. Where is that at?**

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1 A. Brunswick, Maine.  
 2 **Q. Okay. Are you from Maine?**  
 3 A. No.  
 4 **Q. Where are you from originally?**  
 5 A. Colorado.  
 6 **Q. Okay. So did you go to high school in**  
 7 **Colorado, I guess?**  
 8 A. I did.  
 9 **Q. And how did you end up in St. Louis?**  
 10 A. After I graduated from Bowdoin College  
 11 I had a friend who worked for the public defender in  
 12 Seattle. The job interested me and I found a job in  
 13 St. Louis as an investigator.  
 14 **Q. Okay. You started off as an**  
 15 **investigator in St. Louis?**  
 16 A. Yes.  
 17 **Q. So take me through like the timeline, I**  
 18 **guess. So you graduated from undergrad and then**  
 19 **from there you start working as an investigator in**  
 20 **the public defender in St. Louis?**  
 21 A. Yes.  
 22 **Q. Where did you go to law school?**  
 23 A. UCLA.  
 24 **Q. So how long did you work as an**  
 25 **investigator prior to going to law school?**

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1 **Q. Okay. And you worked on a Ph.D. you**  
 2 **said, right?**  
 3 A. Yes.  
 4 **Q. How many years did you work on that?**  
 5 A. Three years altogether.  
 6 **Q. Okay. But you never completed the**  
 7 **Ph.D.?**  
 8 A. No.  
 9 **Q. And then you decided to go to law**  
 10 **school after that?**  
 11 A. Correct.  
 12 **Q. Is there a reason you never did finish**  
 13 **the Ph.D.?**  
 14 A. I didn't want to be a professor.  
 15 **Q. Ah. Now, you went to law school. And**  
 16 **how did you end up back in St. Louis then after**  
 17 **that?**  
 18 A. My wife is from here.  
 19 **Q. Okay. Is she an attorney as well?**  
 20 A. Yes.  
 21 **Q. Okay. How is she employed?**  
 22 A. Missouri Public Defender.  
 23 **Q. Okay. And where is she employed at?**  
 24 A. Eastern Capital.  
 25 **Q. Okay. And in what capacity?**

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1 A. One year.  
 2 **Q. Okay. And when did you graduate from**  
 3 **law school?**  
 4 A. 1998. I also -- I went from -- just so  
 5 you -- everything is clear, I was investigator for a  
 6 year, and then I was a student at UCSC in the  
 7 anthropology program, and then I went to law school  
 8 at UCLA.  
 9 **Q. Okay. So you were a student of**  
 10 **anthropology initially at UCSC?**  
 11 A. Yes.  
 12 **Q. And did you ever complete that -- that**  
 13 **would have been like a master's or something like**  
 14 **that?**  
 15 A. Master's.  
 16 **Q. Did you ever complete that?**  
 17 A. Yes.  
 18 **Q. Okay. So were you doing that at the**  
 19 **same time you were going to law school?**  
 20 A. No, I went to UCSC, completed the  
 21 master's, worked on a Ph.D., then decided to go to  
 22 law school.  
 23 **Q. Okay. Very good. How long was that**  
 24 **master's program with UCSC?**  
 25 A. I was there three years.

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1 A. She is the district defender for  
 2 Eastern Capital.  
 3 **Q. Okay. Very good. And any other**  
 4 **degrees or institutions that you've attended since**  
 5 **your undergraduate degree that we haven't discussed?**  
 6 A. No.  
 7 **Q. Have you noticed any recent trends in**  
 8 **how your district is defending cases? And by that I**  
 9 **mean an increase or decrease in like the number of**  
 10 **depositions or experts you're utilizing, anything**  
 11 **that you've noticed?**  
 12 A. No.  
 13 **Q. And you may have gone over this**  
 14 **already, but can you just kind of walk me through**  
 15 **how you oversee your defenders whenever they're**  
 16 **working on these cases?**  
 17 A. We have one-on-one meetings with  
 18 lawyers periodically. Just go into their office,  
 19 talk about their caseload. We have brainstorming  
 20 sessions. We have a formal review process for  
 21 promotion.  
 22 During the first six months the deputy  
 23 district defender is in charge of training, which  
 24 includes all aspects of training. We have newer  
 25 lawyers second chair so they can understand how to

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1 do a trial.  
2 We try to find cases that will go to  
3 trial so a lawyer will get a trial within the first  
4 six months if at all possible. Sometimes we  
5 succeed. Sometimes we don't.  
6 **Q. Okay. And anything else?**  
7 A. That's an overview.  
8 **Q. Okay. Do you have any kind of like**  
9 **computer system whereby you can monitor your**  
10 **defenders' cases, how they're progressing?**  
11 A. Yes. I've referenced that as the Lotus  
12 Notes case management system.  
13 **Q. And I understand Lotus Notes includes**  
14 **-- basically it's like the file stored digitally; is**  
15 **that correct?**  
16 A. Correct.  
17 **Q. So you can see like the pleadings and**  
18 **discovery and all that kind of thing on the system,**  
19 **right?**  
20 A. We scan discovery into nearly every  
21 case. The pleadings will not be a complete  
22 reflection of the court file because there's no  
23 interface between Case.net and our internal  
24 database.  
25 **Q. Okay. Anything else that it would not**

1 A. So there's no point in asking.  
2 **Q. So you're saying that they have not**  
3 **asked the administrative staff to attempt to to your**  
4 **knowledge?**  
5 A. Correct. I haven't either.  
6 **Q. Okay. Now, as far as when cases come**  
7 **into your office, is it you that decides how to**  
8 **divvy up the cases between your defenders?**  
9 A. Because the amount of cases and  
10 scheduling needs, I have created parameters for case  
11 assignments, but the case assignments are primarily  
12 done by our office manager and the legal assistant.  
13 **Q. Okay.**  
14 A. The two legal assistants.  
15 **Q. And how do they decide who gets what?**  
16 A. The legal assistants assign cases by  
17 the day that the case will appear in associate  
18 circuit. There are two associate circuits Monday  
19 through Thursday. Each day in each division there  
20 are two lawyers.  
21 So the case if it's designated a  
22 Wednesday Division 41 case will go to one of two  
23 lawyers. There are parameters in place for the  
24 lawyers' experience, and also we assign cases evenly  
25 so that one lawyer does not receive more cases than

1 **be included in the Lotus Notes?**  
2 A. Any handwritten notes that would be in  
3 a physical file.  
4 **Q. Okay. How about like e-mail**  
5 **correspondences or correspondence from your office**  
6 **to prosecutor's office or to your clients, are those**  
7 **on Lotus Notes?**  
8 A. Generally speaking, but because it's --  
9 the system is manually intensive, so if you're  
10 sending an e-mail, if you want it preserved, you  
11 also have to manually enter it into Lotus Notes.  
12 That sort of administrative burden is not always met  
13 by the lawyers.  
14 **Q. Okay. It falls on the lawyers to**  
15 **retain their e-mails on the Lotus Notes system?**  
16 A. Yes.  
17 **Q. Have you ever had a situation where**  
18 **they would ask their administrative staff to assist**  
19 **in that task?**  
20 A. No.  
21 **Q. They just haven't asked them to do that**  
22 **you don't think?**  
23 A. There's no time for the administrative  
24 staff to do it.  
25 **Q. Okay.**

1 another. With regard to sex and murder cases, those  
2 are specifically assigned by me or the deputy  
3 district defender.  
4 **Q. And they're assigned on the basis of**  
5 **what exactly?**  
6 A. Whether the lawyer is capable of  
7 handling that particular case in terms of experience  
8 and skill.  
9 **Q. Okay. And are there any local policies**  
10 **or procedures that are specific to your district**  
11 **that you've created that are not system wide?**  
12 A. A few.  
13 **Q. Okay. And what would those be?**  
14 A. Primarily our office emphasizes and  
15 requires that attorneys are very prompt and diligent  
16 in returning all phone calls and inquiries from  
17 family members more so than other offices.  
18 We've also had to deviate from the  
19 statewide client contact standards given the case  
20 flow issues in our office combined with the caseload  
21 number issue in our office.  
22 **Q. Okay. Yeah, I did remember you talking**  
23 **about that earlier. So I think there was some**  
24 **standards promulgated where it was initial visit**  
25 **after seven days and then follow-ups every 30 days**



<p style="text-align: right;">Page 165</p> <p>1 after that; is that correct?</p> <p>2 A. That is the statewide standard.</p> <p>3 Q. But you've changed that for your</p> <p>4 district to be initial visit within ten days and</p> <p>5 then follow-up every 60 days after that?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And what was the reason for that</p> <p>8 change?</p> <p>9 A. It was impossible for the lawyers given</p> <p>10 the caseload flow and numbers to meet the statewide</p> <p>11 standard, and it was causing extreme morale problems</p> <p>12 where departures from our office would have</p> <p>13 increased beyond the numbers that I've mentioned.</p> <p>14 Q. So people were telling you they were</p> <p>15 going to quit over those standards. Is that</p> <p>16 basically the gist of it?</p> <p>17 A. Implying.</p> <p>18 Q. They were implying they were going to</p> <p>19 quit?</p> <p>20 A. Yes.</p> <p>21 Q. And how did they imply that to you?</p> <p>22 A. The caseload's too much. I can't take</p> <p>23 this job anymore.</p> <p>24 Q. Okay. Did they specifically cite these</p> <p>25 standards whenever they were telling that to you or</p>	<p style="text-align: right;">Page 167</p> <p>1 A. Yeah, I'm trying to give you a number.</p> <p>2 Q. Okay.</p> <p>3 A. If you wanted a number.</p> <p>4 Q. Oh, no, sure. Yeah.</p> <p>5 A. I think there's -- there's two lawyers</p> <p>6 with close to 25 or more than 25. There's two with</p> <p>7 20. There's two with ten. There's two or three</p> <p>8 with five. And then everybody else is below that.</p> <p>9 Q. And how many -- we already went over</p> <p>10 this, I apologize, but how many would the remaining</p> <p>11 below five be? How many attorneys are below five?</p> <p>12 A. Seven to ten.</p> <p>13 Q. Okay. Let me take a look at my notes</p> <p>14 because we did go over that already. I think you</p> <p>15 said there were only three that had less than one</p> <p>16 year. Does that sound right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So do you know whether having</p> <p>19 attorneys with that level of experience is typical</p> <p>20 or atypical for other districts?</p> <p>21 A. I don't know. I know there's high</p> <p>22 turnover in the public defender, but I don't know</p> <p>23 the numbers in other districts.</p> <p>24 Q. Okay. So we talked to you earlier</p> <p>25 about like tasks that would be considered</p>
<p style="text-align: right;">Page 166</p> <p>1 is that not something that they specifically</p> <p>2 identified?</p> <p>3 A. This was the result of a very large</p> <p>4 office discussion that Michael Barrett initiated and</p> <p>5 that I assisted in where there were discussions with</p> <p>6 all the lawyers about caseloads, client complaints</p> <p>7 and visitation.</p> <p>8 Q. Okay. And so I guess it was in that</p> <p>9 meeting where you felt that it was implied that the</p> <p>10 standards needed to be changed for your district; is</p> <p>11 that right?</p> <p>12 A. That -- those conversations resulted in</p> <p>13 us changing the standards, and there may have been</p> <p>14 information in the exit interviews that I don't know</p> <p>15 about that Michael Barrett may have known about.</p> <p>16 Q. Okay. So it seems like in your</p> <p>17 particular office that you have a lot of attorneys</p> <p>18 with kind of a good amount of experience. Would you</p> <p>19 say that's true?</p> <p>20 A. I mean, there's -- there's a number,</p> <p>21 yes.</p> <p>22 Q. Okay. I mean, earlier you were</p> <p>23 testifying I think that many of them had at least</p> <p>24 two years' experience and some of them had up to 25</p> <p>25 years of experience?</p>	<p style="text-align: right;">Page 168</p> <p>1 administrative tasks, right, that would be handled</p> <p>2 by assistants. Do you recall that conversation?</p> <p>3 A. Yes.</p> <p>4 Q. And you stated that you don't have any</p> <p>5 paralegals in your office, right?</p> <p>6 A. Correct.</p> <p>7 Q. I just kind of want to pin down, I</p> <p>8 guess, the type of tasks that would be considered</p> <p>9 administrative versus the ones that would be like</p> <p>10 attorney tasks. So if you could go ahead and tell</p> <p>11 me what tasks you consider to be administrative</p> <p>12 ones.</p> <p>13 A. Copying, obtaining records some degree,</p> <p>14 presentation of discovery to some degree. I think</p> <p>15 that's a gray area. A lot of the computer entry.</p> <p>16 Printing and mailing letters. Things of that</p> <p>17 nature.</p> <p>18 Q. And so nonadministrative tasks would</p> <p>19 include things like drafting pleadings; is that</p> <p>20 correct?</p> <p>21 A. Anything that's not a -- an entry of</p> <p>22 appearance or a discovery which are really the only</p> <p>23 two form pleadings, those would be administrative</p> <p>24 tasks.</p> <p>25 Q. Used the term earlier was it pro forma</p>

42 (Pages 165 to 168)

<p style="text-align: right;">Page 169</p> <p>1 <b>for certain pleadings that are pretty standard?</b></p> <p>2 A. The only two are entry of appearance</p> <p>3 and a discovery motion. Everything else should be</p> <p>4 case specific.</p> <p>5 <b>Q. Okay. Now, to what extent are the</b></p> <p>6 <b>attorneys performing these administrative tasks?</b></p> <p>7 A. I think a lot of the computer entry,</p> <p>8 particularly of court dates, is done by the</p> <p>9 attorneys. Because of the number of cases there's</p> <p>10 some copying of discovery that needs to be done by</p> <p>11 attorneys, particularly as it comes in over a course</p> <p>12 of time.</p> <p>13 <b>Q. And do you know whether it's typical</b></p> <p>14 <b>for other practice areas or other private firms to</b></p> <p>15 <b>have attorneys, you know, manage their own calendars</b></p> <p>16 <b>or make their own copies, do you know?</b></p> <p>17 A. Depends on the firm.</p> <p>18 <b>Q. So you were in private practice for a</b></p> <p>19 <b>period of time, right?</b></p> <p>20 A. Correct.</p> <p>21 <b>Q. How long was that?</b></p> <p>22 A. Three years.</p> <p>23 <b>Q. And where were you at during those</b></p> <p>24 <b>three years?</b></p> <p>25 A. Berg, Borgmann, Wilson, Wolk &amp;</p>	<p style="text-align: right;">Page 171</p> <p>1 that number is available, and I believe it's pretty</p> <p>2 low. What it is for my office, I don't know.</p> <p>3 So I think if you were to look at those</p> <p>4 numbers, that would be something number based, and</p> <p>5 then based upon lawyers saying I don't have time to</p> <p>6 investigate cases so I'm not assigning</p> <p>7 investigations, that would be another source of</p> <p>8 information.</p> <p>9 And the fact that our investigators are</p> <p>10 limited to 40 hours and will come to me and say I</p> <p>11 can't work more this week, I'm capped at 40, so I</p> <p>12 don't think it's complete speculation. Those would</p> <p>13 be the three flows of information as to why more</p> <p>14 investigators would be helpful and beneficial.</p> <p>15 <b>Q. So some resources where we could</b></p> <p>16 <b>determine whether it would have an impact of any</b></p> <p>17 <b>kind, or positive or negative impact, but you've not</b></p> <p>18 <b>performed any analysis of those sources or to your</b></p> <p>19 <b>knowledge has anybody else performed analysis of</b></p> <p>20 <b>those sources?</b></p> <p>21 A. Not to my knowledge.</p> <p>22 <b>Q. Okay. And so any impact it would have</b></p> <p>23 <b>on the cases it would be speculative, right?</b></p> <p>24 MS. SHIPMA: I object. These questions</p> <p>25 are argumentative. He's given his answer and if you</p>
<p style="text-align: right;">Page 170</p> <p>1 Reynolds.</p> <p>2 <b>Q. And what kind of -- what area do they</b></p> <p>3 <b>practice in?</b></p> <p>4 A. It was a general practice.</p> <p>5 <b>Q. Okay. And during your years in private</b></p> <p>6 <b>practice did you ever have to manage your own</b></p> <p>7 <b>calendar or make your own copies?</b></p> <p>8 A. Occasionally.</p> <p>9 <b>Q. I think there was some discussion about</b></p> <p>10 <b>what would happen if there were more investigators</b></p> <p>11 <b>or more administrative staff. Do you recall that</b></p> <p>12 <b>conversation?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. And then I think that you said</b></p> <p>15 <b>something like things would be better if you had</b></p> <p>16 <b>more, right?</b></p> <p>17 A. Generally.</p> <p>18 <b>Q. But that's like speculation, correct?</b></p> <p>19 <b>I mean, you're just kind of speculating that it</b></p> <p>20 <b>would be better because there's no -- you didn't</b></p> <p>21 <b>have any like studies or anything that you're basing</b></p> <p>22 <b>this opinion on, correct?</b></p> <p>23 A. In terms of investigation, I think</p> <p>24 statistically -- and I don't have the number at my</p> <p>25 fingertips, but in terms of investigations per case</p>	<p style="text-align: right;">Page 172</p> <p>1 want to argue that later, you can. Move on.</p> <p>2 <b>Q. (By Mr. Moore) Fair enough. Just</b></p> <p>3 <b>question is on the record. So you can provide a</b></p> <p>4 <b>response.</b></p> <p>5 A. I mean, I think the problem is nobody's</p> <p>6 seen a public defender system in Missouri or many</p> <p>7 other places where cases are adequately investigated</p> <p>8 and what results that would have.</p> <p>9 <b>Q. So you're saying that no cases are</b></p> <p>10 <b>investigated adequately?</b></p> <p>11 A. I did not say that.</p> <p>12 <b>Q. Okay.</b></p> <p>13 A. I did not say that -- I don't think</p> <p>14 that study has been conducted, but I think there's</p> <p>15 enough concern out there that it's a problem.</p> <p>16 <b>Q. Can you think of a specific instance</b></p> <p>17 <b>where, you know, an investigator would have had some</b></p> <p>18 <b>kind of measurable impact on a case where there was</b></p> <p>19 <b>no investigator?</b></p> <p>20 A. I mentioned the case that was in</p> <p>21 litigation that was not investigated and witnesses</p> <p>22 at the scene were not located and it's subject of a</p> <p>23 PCR. The problem with the PCR as a remedy is it --</p> <p>24 many witnesses need to be found within a short time</p> <p>25 period.</p>

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<p style="text-align: right;">Page 173</p> <p>1 When the PCR hits the court five to</p> <p>2 ten years later, it's even more exceedingly</p> <p>3 difficult to find those witnesses, and that's</p> <p>4 reflected in a lot of case law that raises Sixth</p> <p>5 Amendment speedy trial concerns, loss of witnesses</p> <p>6 to the defense or even due process cases, which is a</p> <p>7 parallel track to argue that problem, the</p> <p>8 disappearance of witnesses over time.</p> <p>9 <b>Q. So is there a reason given in that case</b></p> <p>10 <b>for why the investigation didn't take place?</b></p> <p>11 A. The lawyer had over 200 cases and was</p> <p>12 struggling to keep his head above water. It's still</p> <p>13 in litigation.</p> <p>14 <b>Q. Is that what the lawyer said that's why</b></p> <p>15 <b>or was -- what was the reason given, if any, for</b></p> <p>16 <b>lack of investigation?</b></p> <p>17 A. That was -- that was the reason the</p> <p>18 lawyer gave.</p> <p>19 <b>Q. He just cited that he had a lot of</b></p> <p>20 <b>cases?</b></p> <p>21 A. That's what he told me, that reflected</p> <p>22 in his caseload, which was over 200.</p> <p>23 <b>Q. Okay. But he could have had an</b></p> <p>24 <b>investigator perform the investigation, right?</b></p> <p>25 A. I think the problem that I've been</p>	<p style="text-align: right;">Page 175</p> <p>1 button and it sends it to the investigator. That's</p> <p>2 also how we track how much work investigators are</p> <p>3 doing.</p> <p>4 <b>Q. Okay. And so this attorney claimed</b></p> <p>5 <b>that there was no time to do that because of his</b></p> <p>6 <b>caseload?</b></p> <p>7 A. That was the condition at the time this</p> <p>8 case went to trial.</p> <p>9 <b>Q. Other than that one situation where we</b></p> <p>10 <b>have, you know, this investigation that is claiming</b></p> <p>11 <b>should have been performed, are you aware of any</b></p> <p>12 <b>other instances specifically where an investigator</b></p> <p>13 <b>would have had a measurable impact if only they had</b></p> <p>14 <b>been assigned that you can point out with</b></p> <p>15 <b>specificity?</b></p> <p>16 A. Not at this deposition at this time.</p> <p>17 <b>Q. Take a look at some of these exhibits</b></p> <p>18 <b>regarding the caseload metrics that we went over at</b></p> <p>19 <b>the beginning of the deposition. So I'm looking at</b></p> <p>20 <b>Plaintiffs' Exhibit 4, Reynolds 37, and then the</b></p> <p>21 <b>fiscal year 2018 supplemental legislative budget</b></p> <p>22 <b>request document.</b></p> <p>23 MS. SHIPMA: It's Exhibit 21.</p> <p>24 MR. MOORE: Thank you. Yes.</p> <p>25 <b>Q. (By Mr. Moore) Can start with</b></p>
<p style="text-align: right;">Page 174</p> <p>1 describing is when you have that number of cases,</p> <p>2 any reasonable lawyer cannot stay on top of that</p> <p>3 caseload, which includes finding the time to send</p> <p>4 out that investigation request.</p> <p>5 It may even include not being able to</p> <p>6 adequately visit with the client where the client</p> <p>7 can express, hey, you need to find these witnesses.</p> <p>8 You need to do it quickly.</p> <p>9 <b>Q. What is involved in the investigation</b></p> <p>10 <b>request, is it like a form that they fill out or</b></p> <p>11 <b>something?</b></p> <p>12 A. It's an electronic message to an</p> <p>13 investigator to do a certain assignment on a case,</p> <p>14 usually to find witnesses.</p> <p>15 <b>Q. And what does that electronic message</b></p> <p>16 <b>look like, it's just kind of like an e-mail or --</b></p> <p>17 A. It's built into the system. It's</p> <p>18 called an action item.</p> <p>19 <b>Q. Okay. And so is it just like a</b></p> <p>20 <b>one-page kind of form that people would fill out or</b></p> <p>21 <b>what would be involved in filling out this action</b></p> <p>22 <b>item?</b></p> <p>23 A. You click on the scene that says action</p> <p>24 item. You assign it to an investigator. You</p> <p>25 describe the task to be done. You click on the</p>	<p style="text-align: right;">Page 176</p> <p>1 <b>Plaintiffs' 4.</b></p> <p>2 A. I don't think it's in this stack,</p> <p>3 Plaintiffs' 4.</p> <p>4 <b>Q. How about Reynolds 37 or Exhibit 21,</b></p> <p>5 <b>any of them are good really if you're able to find</b></p> <p>6 <b>them.</b></p> <p>7 MS. SHIPMA: Well, choose one that you</p> <p>8 want him to look at. Any of them are good. They're</p> <p>9 not all the same, right?</p> <p>10 MR. MOORE: Probably going to go over</p> <p>11 all of them, so whatever he's able to pull up most</p> <p>12 expediently.</p> <p>13 THE WITNESS: 37 and 4 must have been</p> <p>14 placed somewhere.</p> <p>15 MR. MOORE: I only have copies.</p> <p>16 MS. SHIPMA: Can we go off the record</p> <p>17 for a moment while we find those?</p> <p>18 MR. MOORE: Yeah.</p> <p>19 VIDEOGRAPHER: The time is 5:48. We</p> <p>20 are off the record.</p> <p>21 (WHEREIN, a recess was taken.)</p> <p>22 VIDEOGRAPHER: The time is 5:49. We're</p> <p>23 back on the record.</p> <p>24 <b>Q. (By Mr. Moore) Very good. So we've</b></p> <p>25 <b>located some of the exhibits, and just to correct</b></p>

44 (Pages 173 to 176)

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<p style="text-align: right;">Page 177</p> <p>1 the record, we're looking at Plaintiffs' Exhibit 4, 2 Reynolds 37, and Exhibit 38. So do you have those 3 three exhibits in front of you? 4 A. Yes. 5 Q. Okay. So we can just start with 37, 6 which appears to be a pretty clear printout. Are 7 you looking at 37? 8 A. Yes. 9 Q. Okay. And you know, just for the 10 record, I mean, all these exhibits appear to be 11 largely the same just with different years and 12 figures. Is that accurate? 13 A. Two are quarters. One is a fiscal 14 year. 15 Q. Okay. And they all purportedly deal 16 with caseload metrics, would you agree? 17 A. Yes. 18 Q. Okay. So do you have any background in 19 statistical analysis? 20 A. No. 21 Q. Sociological studies, psychological 22 studies of any kind? 23 A. Yes. 24 Q. And that's in relation to your 25 anthropology studies I believe, right?</p>	<p style="text-align: right;">Page 179</p> <p>1 method they used to collect the data that was 2 analyzed in these studies? 3 A. Just the general formula. 4 Q. Okay. And when you say the general 5 formula, what do you mean specifically? 6 A. Well, there was a RubinBrown group that 7 in order to create a workload metric organized a 8 group of public defenders and private attorneys to 9 figure out what is a reasonable workload for 10 different types of cases, and then that metric was 11 created and compiled by a national accounting firm 12 using their standards, and then it was adopted into 13 this formula to compare to the number of lawyers in 14 an office, and the number of cases and a weighted 15 case, homicide would be weighted differently than a 16 possession case. And that's a general overview of 17 what these are. 18 Q. Okay. But you would not be in a 19 position to establish, you know, the veracity or the 20 robustness of their methods of collecting the data 21 or analyzing the data in the RubinBrown report, 22 would you? 23 A. I'm not understanding your question. 24 Q. So I guess first question is you 25 understand -- I think you stated earlier that these</p>
<p style="text-align: right;">Page 178</p> <p>1 A. Yes. 2 Q. So to what extent have you had any 3 experience with sociological or psychological 4 studies? 5 A. I was in graduate school for 6 anthropology, and those three fields are 7 interrelated. 8 Q. Did you actually conduct such studies? 9 A. During my work I had classes in 10 psychological anthropology. My particular research 11 was historical. 12 Q. Okay. So any collection or analysis of 13 datasets from a statistical standpoint on 14 psychological or sociological topics in your 15 educational background? 16 A. Yes. 17 Q. You actually collected data and 18 analyzed data; is that correct? 19 A. I understood your question had I 20 received training in it. I had taken coursework in 21 it, but it was 20 years ago. I'm not claiming to be 22 a statistical expert on these metrics. 23 Q. Okay. Yeah, we'll just go -- we'll 24 just move along then. So in any event, for these 25 studies in front of you, right, are you aware of the</p>	<p style="text-align: right;">Page 180</p> <p>1 are based on numbers from the RubinBrown study; is 2 that right? 3 A. Part of the numbers in here, my 4 understanding, involve that metric created by the 5 RubinBrown group. 6 Q. Okay. And so these numbers based on 7 the RubinBrown group's report, however, you would 8 not be in a position to analyze or testify as to the 9 robustness or accuracy of the RubinBrown report and 10 its methodology, would you? 11 A. I have not been asked to and -- yeah. 12 Q. You said that you would be able to or 13 you -- 14 A. I have not been asked to and I would 15 not be able to. 16 Q. Okay. 17 A. Yeah. 18 Q. And so, you know, you're kind of taking 19 these metrics at face value I guess given that they 20 are based on this RubinBrown report; is that right? 21 A. I'm acknowledging that these exist. 22 Q. Okay. If you could look at Reynolds 23 37. Looking like five and six columns from the 24 right, attorney court time and attorney travel time. 25 Do you see those two columns?</p>

45 (Pages 177 to 180)

<p style="text-align: right;">Page 181</p> <p>1 A. Yes.</p> <p>2 Q. And underneath of that it says</p> <p>3 estimated. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have any idea what that -- how</p> <p>6 they came to those estimates or by what methodology</p> <p>7 they determined those numbers would be accurate</p> <p>8 estimates?</p> <p>9 A. There are two asterisks that refer to</p> <p>10 the bottom of the page which reads court time</p> <p>11 estimated using fiscal year 26 [sic] time log data,</p> <p>12 travel time estimated using fiscal year 2018 expense</p> <p>13 report data.</p> <p>14 Q. I think that was 2016 expense report</p> <p>15 data, right, not 2018?</p> <p>16 A. 2016, yes.</p> <p>17 Q. And so -- so what would that mean</p> <p>18 specifically then for the numbers that are contained</p> <p>19 in those columns, do you know?</p> <p>20 A. Whoever created this spreadsheet is</p> <p>21 referencing the source of the data.</p> <p>22 Q. And do you know by what method they</p> <p>23 estimated the numbers specifically?</p> <p>24 A. It indicates that there was a 2016 time</p> <p>25 log data.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q. Right. You'd be unable to do so,</p> <p>2 right? I mean, is that correct, you would be unable</p> <p>3 to testify as to the veracity of the data contained</p> <p>4 in these reports?</p> <p>5 A. No.</p> <p>6 Q. So you are able to testify as to the</p> <p>7 veracity of the data?</p> <p>8 MS. SHIPMA: No. He said he is not the</p> <p>9 witness that would be able to testify as to the</p> <p>10 veracity of the information in the report. I</p> <p>11 believe he said it a couple of times now. This has</p> <p>12 been asked and answered.</p> <p>13 MR. MOORE: Could you read my question</p> <p>14 to him back?</p> <p>15 COURT REPORTER: Question: So you are</p> <p>16 able to testify as to the veracity of the data?</p> <p>17 MR. MOORE: Did he give an answer to</p> <p>18 that one or -- okay, the one before that then.</p> <p>19 COURT REPORTER: Question: You'd be</p> <p>20 unable to do so, right? I mean, is that correct,</p> <p>21 you would be unable to testify as to the veracity of</p> <p>22 the data contained in these reports?</p> <p>23 Answer: No.</p> <p>24 Q. (By Mr. Moore) So then he's saying</p> <p>25 that he can testify as to the veracity of the data,</p>
<p style="text-align: right;">Page 182</p> <p>1 Q. Do you know what that time log data is?</p> <p>2 A. I would imagine that it's a time log</p> <p>3 data that was created through the Lotus Notes</p> <p>4 system.</p> <p>5 Q. But that would be speculation, right?</p> <p>6 A. I didn't create this spreadsheet.</p> <p>7 Q. Fair enough. And how about the next</p> <p>8 sentence? Travel time estimated using the fiscal</p> <p>9 year 2016 expense report data --</p> <p>10 (Court reporter interruption.)</p> <p>11 Q. (By Mr. Moore) I'll just go with how</p> <p>12 about the next sentence, do you know what that</p> <p>13 sentence really means?</p> <p>14 A. I read it in plain English, but I think</p> <p>15 the answer to your question is I didn't create this</p> <p>16 spreadsheet.</p> <p>17 Q. Okay. And so because you didn't create</p> <p>18 the spreadsheet and because you're not familiar with</p> <p>19 the RubinBrown methodology and analysis, it's</p> <p>20 possible that these numbers could be incorrect,</p> <p>21 right?</p> <p>22 A. I don't know. It's speculation. I --</p> <p>23 I didn't create this spreadsheet. I'm not -- I'm</p> <p>24 not the witness to comment on the veracity of this</p> <p>25 spreadsheet.</p>	<p style="text-align: right;">Page 184</p> <p>1 right? I mean, if I'm misunderstanding the answer</p> <p>2 that's fine too. I'm just trying to clarify on the</p> <p>3 record.</p> <p>4 MS. SHIPMA: Stephen, can you testify</p> <p>5 as to the veracity of the information in that</p> <p>6 report?</p> <p>7 A. I can testify that the case numbers</p> <p>8 appear to reflect accurately what's in our system.</p> <p>9 I have no reason to disbelieve these numbers. I</p> <p>10 have no information to say that they're inaccurate,</p> <p>11 but I have no specialized knowledge of the formulas</p> <p>12 used to actually create the numbers.</p> <p>13 Q. (By Mr. Moore) And so you said which</p> <p>14 information as to the cases appears to be accurate?</p> <p>15 Look at Reynolds 37 first. You can reference it by</p> <p>16 columns I suppose.</p> <p>17 A. Cases initiated minus cases withdrawn,</p> <p>18 net new cases.</p> <p>19 Q. And so those are numbers that you feel</p> <p>20 look correct, right?</p> <p>21 A. Those are numbers that I have access to</p> <p>22 in the Lotus Notes system and they appear to be the</p> <p>23 same numbers that's in my system. The calculations,</p> <p>24 they appear to be correct, but I'm not the one who</p> <p>25 did the calculations.</p>

46 (Pages 181 to 184)



1 Q. So as to the cases initiated,  
2 withdrawn, and net new cases, are those numbers that  
3 you reviewed just prior to this deposition, is that  
4 how you verified those numbers?

5 A. I did look at our fiscal year numbers  
6 for 2017 and 28 [sic] prior to this deposition that  
7 as exist in the computer system at my office.

8 Q. And so you feel that those three appear  
9 to be accurate, right?

10 A. Right.

11 Q. But as to the remainder, you would not  
12 be the person to testify about whether those  
13 calculations were performed correctly or whether  
14 those are accurate, right?

15 A. Correct. I have no reason to  
16 disbelieve them, but talk to the person who created  
17 the spreadsheet.

18 Q. All right. And as to what's going on  
19 in these other offices, divisions, you wouldn't be  
20 able to give testimony about whether those numbers  
21 are accurate or inaccurate; is that right?

22 A. I can't testify about anything going on  
23 in another office.

24 Q. Okay. I think earlier there was a  
25 discussion about problems involving getting

1 discovery log to review the discovery, to discern  
2 what has been disclosed, what is probably out there  
3 and has yet to be disclosed, and to communicate on a  
4 regular basis about the outstanding discovery.

5 And then when the outstanding discovery  
6 is not delivered to promptly litigate that similar  
7 to what civil lawyers would do with interrogatories  
8 and production of documents. That is certainly not  
9 taking place in our office at this time.

10 Q. So you just described what you would  
11 consider to be the best possible practice, right,  
12 with regards to the discovery issue?

13 A. That is the best practice and it's also  
14 the reasonable practice for any lawyer conducting  
15 criminal work. Just as it would be the same for a  
16 civil lawyer to stay on top of interrogatories and  
17 request for documents.

18 Q. But it would be up to the prosecutor to  
19 comply with your requests, right?

20 A. And if they don't, you need to litigate  
21 it just as in civil litigation in a diligent manner.

22 Q. And so you're saying that this issue  
23 has not been litigated in a diligent manner by your  
24 office?

25 A. Not across the caseload because of the

1 discovery from prosecutors. Do you remember that  
2 conversation?

3 A. I remember discussions about discovery.

4 Q. And specifically about the length of  
5 time it could take to get certain discovery from  
6 prosecutors, right? Or do you not recall that?  
7 That's fine too.

8 A. I don't recall the discussion in those  
9 terms.

10 Q. Okay. I think maybe it was in the  
11 context of problems with discovery, and you said  
12 some prosecutors are better than others about  
13 getting you what you need prior to trial. Does that  
14 sound more in line with our discussions?

15 A. Correct.

16 Q. Okay. But I mean, your -- the  
17 financial status of public defender and the number  
18 of attorneys, you know, the number of administrative  
19 staff, none of that would change what the prosecutor  
20 is doing with the discovery, would it?

21 A. Incorrect.

22 Q. Okay. So explain.

23 A. The best practice for discovery is for  
24 an attorney to keep a detailed discovery log or for  
25 a paralegal or a legal assistant to keep a detailed

1 caseload numbers.

2 Q. And you say because of the caseload  
3 numbers. Do you have any specific instances that  
4 you can cite or evidence where that's the case?

5 A. You can go into the database and you  
6 can see that the -- the letters of the discovery  
7 inventory and outstanding discovery and motions to  
8 compel are not being filed. It's quite easy to  
9 discern, and if -- you can also go into Case.net and  
10 that happens when you're reviewing caseloads and  
11 attorney performance.

12 Q. Sorry. So you can see that it's not  
13 getting filed, but is there anything showing that  
14 it's not getting filed because of caseloads?

15 A. If it's not getting filed across a  
16 large section of cases, what else would it be? And  
17 if there's last minute discovery, what else would it  
18 be? And if attorneys are complaining about it, what  
19 else would it be?

20 Q. But you're saying that, you know, you  
21 can't think of anything specifically showing that,  
22 you know, these issues are caused by caseloads,  
23 right?

24 A. I'm telling you they're caused by  
25 caseloads.



1 Q. And as far as evidence goes, do you  
2 have any sort of evidence that would back that claim  
3 up?

4 MS. SHIPMA: Again, I object. It's  
5 argumentative.

6 MR. MOORE: Just asked if -- what  
7 evidence he had in support of his description.

8 MS. SHIPMA: And he's told you.

9 A. What I've described is the answer to  
10 your question.

11 Q. (By Mr. Moore) So I don't think that  
12 quite answers the question because, I mean, we see  
13 what you would consider to be a result the lack of  
14 these motions getting filed, and you have identified  
15 what you believe to be a cause, which is caseloads.  
16 I'm looking for something that would connect those  
17 two, some objective evidence. Do you have anything  
18 like that, like -- like a study or something, some  
19 kind of data or anything that would connect those  
20 two issues?

21 A. I'm referring you to what exists in our  
22 Lotus information system that that type of activity  
23 is not taking place.

24 Q. So would there be like correspondence  
25 in there, stuff saying like we can't get what we

1 Q. But as to my question it would be  
2 correct that, you know, not every case requires the  
3 same list of, you know, investigative things to be  
4 done to it, cases just don't require the same  
5 things, right?

6 MS. SHIPMA: Asked and answered.

7 Q. (By Mr. Moore) You can respond.

8 A. Each case requires an analysis as to  
9 what that case requires. The problem is that  
10 analysis as to what each case requires is not taking  
11 place because of the caseload numbers.

12 Q. And so again, what evidence do you have  
13 that, you know, it's not taking place because of  
14 caseload?

15 A. Attorney reports and attorney reviews.

16 Q. And so what kind of reports are we  
17 talking about, are these written reports where  
18 they're saying that it's due to caseloads that  
19 they're not able to engage in investigative  
20 techniques?

21 A. It's what I mentioned in the first part  
22 of the deposition where attorneys are telling me  
23 that they are unable to do things and that they've  
24 worried that they've plead people too quickly and  
25 they're also worried that clients are pleading to

1 need because of caseloads or anything of that  
2 nature?

3 A. I'm saying there's an absence of those  
4 requests, and that's standard practice.

5 Q. Okay. So there's been some discussion  
6 about various investigative techniques and things  
7 that could be done. For example, visiting a crime  
8 scene, filing motions regarding police conduct, etc.  
9 Do you recall those conversations earlier in this  
10 deposition?

11 A. Yes.

12 Q. Now, it's true, though, that, you know,  
13 these aren't going to be required in every single  
14 case that comes before you, correct?

15 A. Not every single case.

16 Q. For example, you know, visiting crime  
17 scene, not going to be required in every single  
18 case, right?

19 A. I just said that.

20 Q. Right. And filing anything regarding  
21 police conduct, not going to be required in every  
22 single case. For example, cases where there is no  
23 police misconduct, right?

24 A. The question is has the case been  
25 reviewed enough to make that determination.

1 get out of jail because the lawyer has not had  
2 enough time to work on the case and it's dragging  
3 and they just want to get out of jail rather than  
4 address the merits of the case.

5 Q. And so these would just be  
6 conversations that you've had with your defenders,  
7 right?

8 A. It's part of my management. It's my  
9 job to talk to my lawyers about their work on their  
10 cases.

11 Q. Okay. But there wouldn't be anything  
12 in writing where they're discussing their inability  
13 to visit a crime scene because of their caseloads or  
14 anything, right?

15 A. We talk about it. I've not required  
16 that they put it in an e-mail also.

17 Q. So we discussed also that this issue of  
18 defendants being in jail and then I think you said  
19 that some of them feel a greater pressure to plea --  
20 to plead so they can get out of jail, right?

21 A. Yes.

22 Q. So do you have or maintain any kind of  
23 a system whereby you can track how long somebody has  
24 been in jail on these cases?

25 A. Those numbers are easily obtained.

<p style="text-align: right;">Page 193</p> <p>1 <b>Q. And so what do you mean? Does your</b>  2 <b>office track those numbers or are they located</b>  3 <b>somewhere else?</b>  4 A. Jail keeps a list of days confined.  5 <b>Q. Okay.</b>  6 A. And that's e-mailed to us on a daily  7 basis.  8 <b>Q. Okay. So then your office would be</b>  9 <b>aware of how long these people have been in jail; is</b>  10 <b>that accurate?</b>  11 A. Yes.  12 <b>Q. So is there any system in place</b>  13 <b>whereby, you know, you're -- what you do on a case</b>  14 <b>is -- would be dictated in any way by how long</b>  15 <b>they've been in jail?</b>  16 A. No.  17 <b>Q. So why is that?</b>  18 A. Each case is being worked on to the  19 best of the lawyer's ability. Some cases even if  20 they're worked on as they should be are going to  21 take a while, longer than others. The phenomena I  22 described is happening. It could be tracked if we  23 were asked to track it.  24 <b>Q. Do you think it would be helpful to,</b>  25 <b>you know, track that so you could avoid the outcomes</b></p>	<p style="text-align: right;">Page 195</p> <p>1 clients don't have -- you know, the attorneys don't  2 have time for those clients.  3 <b>Q. So you're saying that even if the</b>  4 <b>attorneys were apprised of how long their client had</b>  5 <b>been in jail at your office, that wouldn't affect</b>  6 <b>how they litigate the files at all?</b>  7 A. No. They already know the problem.  8 <b>Q. Okay. So you don't think it would be</b>  9 <b>important to work on the bigger stuff and try to get</b>  10 <b>the clients out of jail or dispose of those matters</b>  11 <b>quicker than the smaller matters?</b>  12 A. They're both important.  13 <b>Q. But it sounds kind of like the smaller</b>  14 <b>ones go first; is that right?</b>  15 A. That's the way the flow is occurring.  16 <b>Q. Tell me again why that takes place.</b>  17 A. The flow of the lower-level felonies is  18 at a higher volume. They move through the case, the  19 system more quickly. The lawyers are overwhelmed  20 with that flow of the cases and they devote their  21 attention to get people out of jail.  22 <b>Q. Are any metrics kept about the number</b>  23 <b>of cases attorneys have closed in a year?</b>  24 A. Yes.  25 <b>Q. Are there any like rewards based on how</b></p>
<p style="text-align: right;">Page 194</p> <p>1 <b>that you discussed earlier?</b>  2 A. No.  3 <b>Q. Why is that?</b>  4 A. Given the resources -- and as I  5 described in one of my letters to the court, lawyers  6 are concentrating their efforts on representing  7 clients, not collecting statistics for a problem  8 that is relatively obvious and has been heavily  9 studied by outside agencies for the past ten years.  10 <b>Q. I think you mentioned earlier that some</b>  11 <b>of the less serious felonies will kind of go through</b>  12 <b>the system faster than the more serious ones, right?</b>  13 A. Yes.  14 <b>Q. So don't you think some kind of a</b>  15 <b>tracking system for how long somebody has been in</b>  16 <b>jail could help the attorneys prioritize the cases</b>  17 <b>that they're working on as opposed to just working</b>  18 <b>on the less serious ones first?</b>  19 A. No.  20 <b>Q. Why is that?</b>  21 A. The flow of cases is immense. The  22 number of complaints are immense. And attorneys are  23 spreading themselves thin across a very high  24 caseload in trying to do the best they can. The  25 clients that are neglected are neglected because the</p>	<p style="text-align: right;">Page 196</p> <p>1 <b>many cases they close in a year?</b>  2 A. No.  3 <b>Q. Or any incentives -- I'm sorry, I</b>  4 <b>talked over you there. Your answer was no?</b>  5 A. No.  6 <b>Q. Is it considered whenever they're up</b>  7 <b>for a promotion or for raises of any kind?</b>  8 A. No.  9 <b>Q. So to what extent is it utilized if</b>  10 <b>you're keeping track of it?</b>  11 A. I don't keep track of it. I don't -- I  12 don't know if there's much value to that particular  13 metric.  14 <b>Q. Oh, okay. So who does track it then?</b>  15 A. It's tracked in the computer.  16 <b>Q. But it doesn't have any relevance in</b>  17 <b>the hiring or retention or promotion process you're</b>  18 <b>saying?</b>  19 A. I'll tell you why. One of the largest  20 complaints is that somebody is coerced into a plea.  21 I don't think you want to incentivize coerced pleas,  22 and coerced pleas would be if you incentivize  23 closing cases quickly, the by-product of that could  24 be coercing pleas, and you'll create more 24.035  25 problems, more client complaint problems, more</p>

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<p style="text-align: right;">Page 197</p> <p>1 request for change of counsel.</p> <p>2 It's not how you counsel a client. The</p> <p>3 fact is most of the cases are being disposed of</p> <p>4 within a hundred days anyways. There's no need to</p> <p>5 speed up the process.</p> <p>6 <b>Q. That's fair enough. I'm trying to</b></p> <p>7 <b>understand why, you know, there would be this</b></p> <p>8 <b>incentive to -- or why the attorneys would turn over</b></p> <p>9 <b>these low-level felonies constantly and why that</b></p> <p>10 <b>would affect the bigger felonies, why -- why does</b></p> <p>11 <b>that take place exactly? I know you've talked about</b></p> <p>12 <b>the flow, but I mean, is there any other reason, is</b></p> <p>13 <b>there --</b></p> <p>14 A. Yeah.</p> <p>15 <b>Q. -- psychological or --</b></p> <p>16 A. If you have 150 cases and a hundred of</p> <p>17 them are calling you to get out of jail and a</p> <p>18 hundred of them are working towards a probation</p> <p>19 recommendation, and if those cases are the majority</p> <p>20 of cases that are constantly flowing to the office,</p> <p>21 that's just where most of the attention gets</p> <p>22 directed. I've answered the question that way</p> <p>23 several times. I don't think there's anything else</p> <p>24 I can tell you.</p> <p>25 <b>Q. Do you think like a first-in, first-out</b></p>	<p style="text-align: right;">Page 199</p> <p>1 <b>the bigger ones. I'm trying to figure out why that</b></p> <p>2 <b>would be.</b></p> <p>3 A. I've given you the answer.</p> <p>4 <b>Q. So in these cases, in these felonies, I</b></p> <p>5 <b>think you testified earlier that there can be some</b></p> <p>6 <b>discovery that needs to be reviewed that your</b></p> <p>7 <b>attorneys don't have time to review; is that right?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. So what kind of discovery are we</b></p> <p>10 <b>talking about for these cases? What would be</b></p> <p>11 <b>contained in that file?</b></p> <p>12 A. As I mentioned, many cases involve</p> <p>13 electronic discovery, which can involve crime scene</p> <p>14 videos, witness videos, interrogation videos,</p> <p>15 surveillance videos, phone calls from the jail, cell</p> <p>16 phone records.</p> <p>17 <b>Q. And anything else that, you know, would</b></p> <p>18 <b>typically be in these files?</b></p> <p>19 A. Including police reports, the other</p> <p>20 thing that comes to mind is electronic analysis of</p> <p>21 cell phones and computers.</p> <p>22 <b>Q. And so are we talking like will there</b></p> <p>23 <b>ever be a situation where you have like thousands</b></p> <p>24 <b>and thousands of pages of medical records or</b></p> <p>25 <b>anything of that nature in the files?</b></p>
<p style="text-align: right;">Page 198</p> <p>1 <b>type system would be of use?</b></p> <p>2 A. No.</p> <p>3 <b>Q. Why is that?</b></p> <p>4 A. It's unethical.</p> <p>5 <b>Q. And why is that?</b></p> <p>6 A. You're supposed to represent a client</p> <p>7 based upon the client's needs and the dynamics of</p> <p>8 the case.</p> <p>9 <b>Q. And so just kind of flesh that out, I</b></p> <p>10 <b>guess. Why would that be unethical if you're, you</b></p> <p>11 <b>know, trying to get the oldest cases out before the</b></p> <p>12 <b>newer cases?</b></p> <p>13 A. So you have five cases. Five people</p> <p>14 come in and want a bond reduction. You work on the</p> <p>15 other five cases and ignore those five cases for</p> <p>16 three months. How is that not -- not unethical?</p> <p>17 <b>Q. You're saying the current practice of</b></p> <p>18 <b>just kind of dealing with the low-level felonies is</b></p> <p>19 <b>more ethical than leaving the more serious felonies</b></p> <p>20 <b>to I guess kind of sit in the background?</b></p> <p>21 A. I think the whole point of this</p> <p>22 litigation is the caseload is unethical.</p> <p>23 <b>Q. More -- my question is more about the</b></p> <p>24 <b>way the cases are prioritized. It seems like for</b></p> <p>25 <b>some reason lower-level ones are prioritized over</b></p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yes.</p> <p>2 <b>Q. And when would that be?</b></p> <p>3 A. Many of the mental health cases.</p> <p>4 <b>Q. And other than mental health cases, you</b></p> <p>5 <b>know, any kind of voluminous documentation like</b></p> <p>6 <b>that?</b></p> <p>7 A. Victims with serious injuries.</p> <p>8 <b>Q. And other than those, anything else?</b></p> <p>9 A. Mitigation.</p> <p>10 <b>Q. Mitigation? What do you mean</b></p> <p>11 <b>specifically?</b></p> <p>12 A. Most cases are resolved through a plea,</p> <p>13 but those pleas involve presentation of mitigation</p> <p>14 evidence, either to the prosecutor or to the court.</p> <p>15 Mitigation evidence is often documentary reaching</p> <p>16 back to the client's childhood. It could be school</p> <p>17 records, medical records, work records.</p> <p>18 <b>Q. So earlier on you also made a statement</b></p> <p>19 <b>that it was expected that the private bar would be</b></p> <p>20 <b>resistant to these cases being appointed. Do you</b></p> <p>21 <b>recall making that statement?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. And what's your basis for that?</b></p> <p>24 A. My basis for that is that that is the</p> <p>25 expected result. Now, if the private bar is</p>

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<p style="text-align: right;">Page 201</p> <p>1 appointed and is not resistant, no problems. But I</p> <p>2 think to go into a large-scale appointment process</p> <p>3 thinking that the private bar is going to be</p> <p>4 pleased, I think most people would find that to be a</p> <p>5 bad strategy and some communication strategy needs</p> <p>6 to be implemented if that program is to be</p> <p>7 successful.</p> <p>8 <b>Q. So had you talked to private attorneys</b></p> <p>9 <b>who said they would be resistant to it?</b></p> <p>10 A. The head of the MCRC.</p> <p>11 <b>Q. That's the Missouri Coalition for --</b></p> <p>12 <b>what was the rest of it?</b></p> <p>13 A. Right to Counsel.</p> <p>14 <b>Q. So he said he would be resistant to</b></p> <p>15 <b>receiving these cases?</b></p> <p>16 A. Yes.</p> <p>17 <b>Q. Even though he started the MCRC?</b></p> <p>18 A. The goal of that organization is to</p> <p>19 find cases for trial for the participants, not to</p> <p>20 engage in a very large appointment process.</p> <p>21 <b>Q. And anyone else tell you that they</b></p> <p>22 <b>would be resistant to the appointment process?</b></p> <p>23 A. Everybody else on the MCRC board when</p> <p>24 it was being created.</p> <p>25 <b>Q. They all told you the same thing?</b></p>	<p style="text-align: right;">Page 203</p> <p>1 A. Somewhere between 50 and 80.</p> <p>2 <b>Q. And so then how did you come to that</b></p> <p>3 <b>range?</b></p> <p>4 A. Federal public defender numbers,</p> <p>5 American Bar Association numbers, experience of the</p> <p>6 difficulty through personal experience of when a</p> <p>7 case becomes unmanageable, whether as a public</p> <p>8 defender or in private practice. What I know of the</p> <p>9 RubinBrown study and the metrics used there.</p> <p>10 <b>Q. And so these numbers are just kind of</b></p> <p>11 <b>an amalgamation of this kind of like zeitgeist of</b></p> <p>12 <b>information out there that includes all the studies</b></p> <p>13 <b>and your own experience, right?</b></p> <p>14 A. Yes.</p> <p>15 <b>Q. It's not based on any study that you've</b></p> <p>16 <b>personally conducted, right?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. So there's a situation earlier where</b></p> <p>19 <b>you discuss that there was like a nine to 12-month</b></p> <p>20 <b>period of time where a defendant had not had any</b></p> <p>21 <b>contact from the attorney, right?</b></p> <p>22 A. Correct.</p> <p>23 <b>Q. I think you noted that one of the</b></p> <p>24 <b>reasons for that was because a trial had been set</b></p> <p>25 <b>like 18 months out, right, by the court?</b></p>
<p style="text-align: right;">Page 202</p> <p>1 A. Yes. That was part of the reason why</p> <p>2 they wanted to focus on trial cases rather than</p> <p>3 widespread appointments.</p> <p>4 <b>Q. Okay. And can you just list for me who</b></p> <p>5 <b>was on that board at the time?</b></p> <p>6 A. I don't know the names, but</p> <p>7 representatives from Bryan Cave and Thompson Coburn</p> <p>8 and other large firms in St. Louis.</p> <p>9 <b>Q. Okay. And so earlier I think you</b></p> <p>10 <b>pretty much headed this question off, but you can</b></p> <p>11 <b>only really speak to the goings on in your district,</b></p> <p>12 <b>right, not the other districts in Missouri?</b></p> <p>13 A. Correct.</p> <p>14 <b>Q. Okay. So you stated multiple times in</b></p> <p>15 <b>this deposition that you believe the caseload in</b></p> <p>16 <b>your district for your attorneys is too high, right?</b></p> <p>17 A. Correct.</p> <p>18 <b>Q. What would be an acceptable caseload</b></p> <p>19 <b>for each attorney?</b></p> <p>20 A. The federal public defenders cap their</p> <p>21 caseload at 40. This area has a large area of</p> <p>22 debate, but I think that's one metric that is in use</p> <p>23 and is approved by a court system.</p> <p>24 <b>Q. Do you personally have a number in</b></p> <p>25 <b>mind?</b></p>	<p style="text-align: right;">Page 204</p> <p>1 A. What I said is that situation occurs</p> <p>2 and sometimes it occurs when a trial date has been</p> <p>3 set out that far. It can also occur on a serious</p> <p>4 case even though there's regular court appearances</p> <p>5 over that same period where the attorney is meeting</p> <p>6 with the clients in court very briefly, but never</p> <p>7 having any substantive conversation with that client</p> <p>8 in the jail or doing any substantive work on the</p> <p>9 case.</p> <p>10 <b>Q. So they'd still be seeing the client at</b></p> <p>11 <b>like court appearances, though, throughout that</b></p> <p>12 <b>period of time?</b></p> <p>13 A. They would visually see the client.</p> <p>14 They would not consult with the client about the</p> <p>15 case. They would make a court announcement. They</p> <p>16 would not consult with the client about the case.</p> <p>17 <b>Q. But if, you know, you have -- you have</b></p> <p>18 <b>the client and the attorney in the same room, right?</b></p> <p>19 <b>That's the way the dockets are set up?</b></p> <p>20 A. Yes, and there are usually 12 attorneys</p> <p>21 and 20 defendants in the courtroom and six other</p> <p>22 defendants in the jury box who are confined. So</p> <p>23 it's impossible to do anything.</p> <p>24 <b>Q. And how often do those case management</b></p> <p>25 <b>conferences take place?</b></p>

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<p style="text-align: right;">Page 205</p> <p>1 A. It depends on the case and the -- and</p> <p>2 the courtroom.</p> <p>3 Q. Just generally speaking.</p> <p>4 A. Every 30 to 60 days.</p> <p>5 Q. Okay. So it seems like every 30 to</p> <p>6 60 days you have attorney and client in the same</p> <p>7 room, right, for most cases you would say?</p> <p>8 A. In the courtroom with other people.</p> <p>9 Q. Fair. But the client could, you know,</p> <p>10 wave the attorney down and say, hey, I need to talk</p> <p>11 to you at some point, right? That's possible?</p> <p>12 A. I'm sure that happens.</p> <p>13 Q. Okay. And they could even, you know,</p> <p>14 whisper something in their attorney's ear or have a</p> <p>15 brief conversation with their attorney at those case</p> <p>16 management conferences, right?</p> <p>17 A. I would disagree.</p> <p>18 Q. Why is that?</p> <p>19 A. If you're talking about a substantive</p> <p>20 conversation, what your question implies, the answer</p> <p>21 is no. If you're talking about a client making a</p> <p>22 simple request, hey, can you visit me, the answer is</p> <p>23 yes.</p> <p>24 Q. And the attorney can give them a status</p> <p>25 update of those case management conferences, right,</p>	<p style="text-align: right;">Page 207</p> <p>1 Q. Just for that one, though, for right</p> <p>2 now?</p> <p>3 A. I don't know. I'd have to check the</p> <p>4 record.</p> <p>5 Q. Okay. And in any event, you know, if</p> <p>6 the court sets a case for trial 18 months out, your</p> <p>7 client's not going to be getting out in that interim</p> <p>8 period of time no matter what kind of contact you're</p> <p>9 having with them, right?</p> <p>10 A. Highly unlikely.</p> <p>11 Q. Okay. And your clients are able to</p> <p>12 make phone calls to your office, right?</p> <p>13 A. Yes.</p> <p>14 Q. You don't have any system in place</p> <p>15 whereby they have no access to you guys from jail,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. And you guys can still send letters</p> <p>19 back and forth, right?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any other ways you can</p> <p>22 communicate with your clients while they're in jail</p> <p>23 other than, you know, telephone and in-person</p> <p>24 meetings and regular mail?</p> <p>25 A. Those are the three methods.</p>
<p style="text-align: right;">Page 206</p> <p>1 about just whatever was going on, hey, we're --</p> <p>2 A. No.</p> <p>3 Q. -- looking into this, we're looking</p> <p>4 into that?</p> <p>5 A. No.</p> <p>6 Q. Why is that?</p> <p>7 A. There's no confidentiality.</p> <p>8 Q. Even if they're like whispering to each</p> <p>9 other like right next to each other?</p> <p>10 A. No.</p> <p>11 Q. And that's I guess because you think</p> <p>12 that some third party would be able to hear them,</p> <p>13 right?</p> <p>14 A. Confined client is seated next to other</p> <p>15 confined clients closer than the people in this</p> <p>16 deposition room. If that client is charged with a</p> <p>17 sex offense, everybody else in the jail who's</p> <p>18 confined and within a four-foot radius of that</p> <p>19 client is going to hear your conversation. I doubt</p> <p>20 that's appropriate.</p> <p>21 Q. So this particular instance you said</p> <p>22 within nine to 12 months of no contact, was there</p> <p>23 other case management conferences going on in that</p> <p>24 instance, if you know?</p> <p>25 A. That is not the only instance.</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. There's no like e-mail or, I don't</p> <p>2 know, text messaging, anything like that?</p> <p>3 A. No.</p> <p>4 Q. So you're familiar -- are you familiar</p> <p>5 with Chapter 600, the safety valve statute? Does</p> <p>6 that sound familiar, 600.063?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what's your understanding of</p> <p>9 that statute?</p> <p>10 A. That statute is a procedure where you</p> <p>11 can address the court about caseload issues.</p> <p>12 Q. Okay. And I think you stated earlier</p> <p>13 that you've not utilized that, right?</p> <p>14 A. Correct.</p> <p>15 Q. And you gave some reasons for not</p> <p>16 utilizing that, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And can you tell me what those reasons</p> <p>19 were specifically?</p> <p>20 A. The judges are willing to engage in</p> <p>21 productive dialogue and not requiring it, and the</p> <p>22 remedies being discussed are serious and on the</p> <p>23 table and would be the same as if we had gone</p> <p>24 through that procedure and that procedure allows for</p> <p>25 a hearing on the record, but to solve these problems</p>

52 (Pages 205 to 208)

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1 is going to take extensive discussions and so it's  
 2 form over substance. We're doing the same thing.  
 3 We're being collaborative.  
 4 **Q. So why wouldn't you proceed via both**  
 5 **methods then, the informal and the formal with, you**  
 6 **know, the rule 600 requirements?**  
 7 A. Because it was initiated before that  
 8 was required by the court of appeals and we're deep  
 9 into the discussions, and at some point we may do  
 10 that, but it's not going to make a difference if  
 11 we're already productively discussing things. It's  
 12 form over substance.  
 13 **Q. I think you also mentioned some other**  
 14 **disincentives and you reference something that**  
 15 **happened in Kansas City; is that right?**  
 16 A. Yes.  
 17 **Q. So I guess Kansas City had attempted to**  
 18 **use the section 600 remedy?**  
 19 A. That's my understanding.  
 20 **Q. So what's your understanding of what**  
 21 **took place I guess specifically in Kansas City?**  
 22 A. It's acrimonious and the judges are not  
 23 engaging with the public defender about the caseload  
 24 issue and the Hinkebein decision.  
 25 **Q. And so specifically what kind of**

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1 **acrimony are we talking about?**  
 2 MS. SHIPMA: I object. His testimony  
 3 on this is just based on his understanding. We had  
 4 a whole deposition of Ruth Patch, the public -- the  
 5 district defender in Kansas City who talked at  
 6 length for hours and was questioned for hours by  
 7 your colleague Stephen Ramsey about this issue.  
 8 I would just refer you to her  
 9 deposition to get your answers on that. They're  
 10 going to be much more valuable than Stephen's  
 11 recollection or understanding of what may or may not  
 12 have happened there.  
 13 MR. MOORE: Right. No, I do understand  
 14 that, and I appreciate that. But his understanding  
 15 of what's happened in Kansas City has affected  
 16 his --  
 17 MS. SHIPMA: I don't understand what  
 18 his understanding of what happened in Kansas City is  
 19 adding to this deposition other than time.  
 20 MR. MOORE: Well, we're going to get  
 21 there.  
 22 MS. SHIPMA: Are you going to ask a  
 23 specific -- well, get there quickly.  
 24 MR. MOORE: Okay. I appreciate your  
 25 patience.

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1 **Q. (By Mr. Moore) So what is your**  
 2 **understanding of specifically what took place in**  
 3 **Kansas City? Because my understanding is that has**  
 4 **affected your opinion of approaching this in your**  
 5 **district; is that accurate?**  
 6 A. Which question do you want me to  
 7 answer?  
 8 **Q. Both. You can start with your**  
 9 **understanding of what happened in Kansas City first.**  
 10 MS. SHIPMA: And he has answered that  
 11 for you already.  
 12 MR. MOORE: Well, I don't think  
 13 specifically he's had a --  
 14 A. What I've -- what I've said is -- is  
 15 the extent of my understanding.  
 16 **Q. (By Mr. Moore) Okay. So that's all**  
 17 **that you've heard about the Kansas City issue,**  
 18 **right? Just that there was acrimonious -- you don't**  
 19 **have any more specifics than that; is that right?**  
 20 A. What I said is what I know.  
 21 **Q. Okay. And sir, are you saying that**  
 22 **that knowledge disincentivized you in your district**  
 23 **from pursuing section 600?**  
 24 A. No, I just -- I've -- what I stated  
 25 previously is why we're not using 600, and I've also

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1 stated that if these discussions don't lead anywhere  
 2 that we will do 600, but the result is going to be  
 3 determined by these discussions. And once again,  
 4 it's form over substance and it's pretty much my  
 5 answer.  
 6 **Q. You still think the proceeding pursuant**  
 7 **to the statute is necessary because of these**  
 8 **informal negotiations?**  
 9 MS. SHIPMA: Asked and answered.  
 10 **Q. (By Mr. Moore) Is that right?**  
 11 A. I've -- I've answered your question as  
 12 best as I can. I mean, I know you keep rephrasing  
 13 it, but if these discussions don't work we'll do the  
 14 statute, but these discussions are the substantive  
 15 equivalent of the statute.  
 16 **Q. So my question was just why not do both**  
 17 **at the same time? Why not? Why not proceed through**  
 18 **both avenues concurrently now that they're both**  
 19 **available so that in case the informal one doesn't**  
 20 **work out you have done what is required by statute?**  
 21 A. And I've said we may do that.  
 22 **Q. Why not at the same time, though? Why**  
 23 **not concurrently?**  
 24 A. I've just -- I've answered your  
 25 question.

53 (Pages 209 to 212)

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1 **Q. I don't know that there has been an**  
2 **answer to that question specifically.**

3 A. Just the discussions that we are having  
4 are substantive solutions, which would be the same  
5 remedies as filing under the statute.

6 **Q. So you feel like it's a waste of time**  
7 **then or I'm trying to -- why not do like both is the**  
8 **question? You say you're already doing the informal**  
9 **ones, which I understand. The question really is so**  
10 **why not also the formal section 600?**

11 A. I know. I've answered your question.  
12 I mean, I just -- I don't have anything else to add.

13 **Q. So there are no other reasons then**  
14 **other than what you've already discussed?**

15 A. Correct.

16 **Q. Have you ever given any other**  
17 **interviews with newspapers on these issues or any**  
18 **other news media other than the ones we've gone over**  
19 **today?**

20 MS. SHIPMA: Objection. The question  
21 is vague, time frame.

22 **Q. (By Mr. Moore) Time frame is**  
23 **unlimited. Regarding the issues that are at issue**  
24 **in this lawsuit, have you ever given any other**  
25 **interviews or, you know, written articles regarding**

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1 MS. SHIPMA: Because --

2 **Q. (By Mr. Moore) So are there other**  
3 **noncaseload issues that you feel are related to this**  
4 **suit that you've previously given news interviews or**  
5 **participated in news articles in the past that we've**  
6 **not discussed?**

7 A. Not to my knowledge.

8 **Q. Okay. Have you ever been interviewed**  
9 **or had discussions with anyone at the ACLU regarding**  
10 **this lawsuit?**

11 A. No.

12 **Q. How about anyone else beside from of**  
13 **course your counsel?**

14 A. Meaning?

15 **Q. So attorney-client privilege, don't**  
16 **want to hear about those conversations. You said**  
17 **nothing with plaintiffs' counsel at the ACLU. Have**  
18 **there been any other, you know, conversations or**  
19 **interviews that you've had regarding this lawsuit**  
20 **that we've not discussed today?**

21 A. No.

22 **Q. So it sounds like from our prior**  
23 **conversations that you have hopes that this informal**  
24 **collaborative process with the judges and other**  
25 **organizations is going to bear fruit; is that right?**

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1 **these issues for any other media outlets other than**  
2 **the ones that we've discussed here today?**

3 MS. SHIPMA: And I would object that  
4 the question is overbroad. He's been working with  
5 the public defender system for I don't remember how  
6 long, but -- but more than ten years. You're asking  
7 him to recall every instance he's talked with a news  
8 outlet regarding caseload issues in the past ten  
9 years, 20 years, what time frame?

10 MR. MOORE: I mean, if it's been that  
11 voluminous, I guess we'll need to go through and  
12 determine, but my question was just --

13 MS. SHIPMA: I object. It's overbroad.  
14 Stephen, you can answer if you can.

15 A. So in terms of caseload, I believe  
16 those two articles are the only two.

17 **Q. (By Mr. Moore) Okay. Are there other**  
18 **issues in this lawsuit not unrelated to caseload**  
19 **that you would have given other interviews or, you**  
20 **know, prepare articles or participated in articles**  
21 **outside the ones we've talked about today?**

22 MS. SHIPMA: Objection, vague. What  
23 other issues?

24 MR. MOORE: That's what I'm trying to  
25 determine. He cited caseloads specifically.

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1 A. I would like to see these conversations  
2 produce a temporary measure of relief to the problem  
3 that might lead to a more lasting relief of the  
4 problem.

5 **Q. So my question was more are you**  
6 **optimistic that those talks are going to be**  
7 **successful?**

8 A. I would like for them to be successful,  
9 and I believe they can be successful.

10 **Q. Do you believe that they will be?**

11 A. I have no idea. We'll find out.

12 **Q. So you have no indication whether those**  
13 **talks are going to be successful one way or the**  
14 **other?**

15 MS. SHIPMA: I object, asked and  
16 answered.

17 A. I mean, that's -- we'll find out. All  
18 of us will find out in the future. I mean, they're  
19 being done in good faith and ideas are on the table  
20 and concrete ideas are being discussed. Let's see  
21 what happens.

22 **Q. (By Mr. Moore) I understand --**

23 A. What else do you want?

24 **Q. I understand nothing is certain, but as**  
25 **party to those talks, I mean, you might have some**

54 (Pages 213 to 216)

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1 kind of indication whether you feel they're going to  
2 be successful or not, right?

3 A. I've just given you my evaluation of  
4 the situation. I'm not in control of the situation.

5 **Q. That's a very lawyerly answer.**

6 A. It's the answer.

7 **Q. So -- so there's just -- you have no  
8 indication either way --**

9 MS. SHIPMA: I object.

10 **Q. (By Mr. Moore) -- whether you feel  
11 they're going to be successful? It's just a simple  
12 question. I mean --**

13 MS. SHIPMA: It is a simple question  
14 and you've asked it probably about five times now  
15 and he's answered you. Let's move to another  
16 productive, more productive topic. One that you  
17 haven't asked him about five times.

18 MR. MOORE: Could you please read back  
19 his answer to my last question then?

20 COURT REPORTER: Answer: I've just  
21 given you my evaluation of the situation. I'm not  
22 in control of the situation.

23 MR. MOORE: I guess we've got to go  
24 back to the one prior to that then.

25 COURT REPORTER: Answer: I mean,

1 on.

2 MS. SHIPMA: I agree.

3 **Q. (By Mr. Moore) I think you were asked  
4 earlier about essentially the competence of the  
5 private attorneys being assigned these criminal  
6 matters. Do you recall that conversation?**

7 A. Yes.

8 **Q. I think you said something along the  
9 lines of it could be a concern, right?**

10 A. Yes.

11 **Q. So I want to discuss a little bit about  
12 what would be concerning about assigning these  
13 matters to members of the private bar. Are you  
14 saying generally that any amount of assigning these  
15 out is a questionable and could potentially raise  
16 issues or are you saying there's specific instances  
17 where it could become an issue?**

18 A. I was understanding the question to  
19 mean if these cases are assigned to private counsel  
20 who are disinterested in taking the case and/or do  
21 not have adequate training that the solution of  
22 assigning cases to private bar may be equal to the  
23 problem that exists in the public defender, the case  
24 is not receiving attention, or even potentially  
25 worse because some of these appointees may not even

1 that's -- we'll find out. All of us will find out  
2 in the future. I mean, they're being done in good  
3 faith and ideas are on the table and concrete ideas  
4 are being discussed. Let's see what happens.

5 **Q. (By Mr. Moore) That didn't sound like  
6 an answer to me. That sounds like a not answer. My  
7 question was --**

8 MS. SHIPMA: What was the one before  
9 that?

10 **Q. (By Mr. Moore) The question  
11 specifically was do you feel that they're going to  
12 be successful, and you can say that you're not sure,  
13 you don't know, or I guess no.**

14 MS. SHIPMA: I object for you  
15 suggesting answers to him.

16 MR. MOORE: That's fine too. I'm  
17 just -- very simple --

18 (Court reporter interruption.)

19 MS. ROSCA: There's an answer before  
20 that if you'd like that read back.

21 MR. MOORE: Well --

22 MS. ROSCA: Can you read back the  
23 question -- the answer before the one you --

24 MR. MOORE: You know what, let's just  
25 stop. We have enough on that one. We'll just move

1 -- if they have the training, may not want to do the  
2 case and work on the case as it should be.

3 **Q. Okay. Fair enough. But if the private  
4 counsel was interested and had adequate training, do  
5 you feel that there would be anything to be  
6 concerned about?**

7 A. Under -- if those are true in the  
8 immediate term, no, they would not be something that  
9 would be concerned about if those two things are  
10 true.

11 **Q. Okay. So I think you said earlier that  
12 turnover has increased over the last four years.  
13 Does that sound accurate?**

14 A. Yes.

15 **Q. I think as a cause of that you cited  
16 high caseload, low pay, and -- and being a hard job  
17 generally; is that right?**

18 A. Yes.

19 **Q. So have -- has the caseload or pay or  
20 nature of the job changed some way -- in some way in  
21 the last four years?**

22 A. No.

23 **Q. Okay. So could there be some other  
24 reason for the turnover that you are aware of?**

25 A. I don't know.

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1 **Q. But it might not strictly be related to**  
2 **caseload, right?**  
3 A. I think it's -- I've mentioned that  
4 it's those three factors are my best estimates of  
5 what's causing the caseload. I mean, the turnover  
6 of attorneys.  
7 **Q. Okay. There's a lot of discussion**  
8 **about the negotiations that would be engaged in as**  
9 **part of the plea process. Do you recall that**  
10 **conversation?**  
11 A. Yes.  
12 **Q. And I think that, you know, in the end**  
13 **your conclusion was that the negotiations could**  
14 **potentially be hindered by the level of workup the**  
15 **case receives; is that right? Not so much by the**  
16 **time that they have to negotiate with the**  
17 **prosecutor, correct?**  
18 A. Correct.  
19 **Q. Okay. And so can you cite any specific**  
20 **instances where, you know, a specific attorney has**  
21 **told you like I was not able to negotiate as well**  
22 **because I didn't work this case up good enough?**  
23 A. Yes. Cases that are set for trial in  
24 our office tend to result in not guilty verdicts or  
25 reduced plea offers or nolle. Those statistics are

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1 A. It's on my day-to-day management  
2 duties. It's not a bird's eye view. It's my -- my  
3 job is to know what's going on in my attorneys'  
4 caseload.  
5 **Q. So I guess in other words, in bird's**  
6 **eye view --**  
7 **(Court reporter interruption.)**  
8 A. It's my day-to-day job to know what's  
9 going on in my attorneys' caseload.  
10 **Q. (By Mr. Moore) So just ask you this**  
11 **like negotiation because of workup link, okay. Has**  
12 **anybody specifically told you that they were not**  
13 **able to negotiate as successfully because of the**  
14 **workup in the case that they performed? Anyone**  
15 **specifically ever said that to you?**  
16 A. Yes.  
17 **Q. Okay.**  
18 A. And I've mentioned that in my  
19 deposition that lawyers have told me that they felt  
20 uncomfortable with guilty pleas because the client  
21 wanted to get out of jail and the case had not been  
22 worked up according to the attorney's estimation of  
23 their work input into the case, and those  
24 conversations are frequent.  
25 **Q. And when you say frequent, what kind of**

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1 -- particularly with the jury results are kept and  
2 they're beginning to be kept with the nolle. So  
3 that is the basis for applying that analysis across  
4 the rest of the caseload.  
5 **Q. So was there like a specific instance**  
6 **you're thinking of where somebody told this to you**  
7 **or is it more like just the general trend that**  
8 **you're seeing?**  
9 A. Like I said, the jury trial result  
10 statistics are kept. The nolle statistics are in  
11 place to start being kept as far as my understanding  
12 is.  
13 **Q. But --**  
14 A. This happens -- once again, part of my  
15 job is to talk to lawyers about their caseload and  
16 when they're doing their review to learn about their  
17 successes.  
18 (Phone interruption.)  
19 MS. SHIPMA: So sorry.  
20 MR. MOORE: She's ready to take off.  
21 A. And so I know when lawyers are  
22 litigating and getting better results.  
23 **Q. (By Mr. Moore) So you're saying this**  
24 **more from like a bird's eye's view I guess based on**  
25 **results and cases; is that accurate?**

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1 **frequency are we talking?**  
2 A. Several times a month per attorney.  
3 **Q. The same conversation about the -- the**  
4 **plea deals and all that kind of thing.**  
5 A. In reference to different cases.  
6 **Q. And there is also discussion about**  
7 **attending lineups. Do you recall that conversation?**  
8 A. Yes.  
9 **Q. I think you said that the reason that**  
10 **there had been no attendance is because you guys are**  
11 **not contacted, right?**  
12 A. That is probably the number one and  
13 predominant and sole reason.  
14 **Q. Okay. Just give me a second here. Do**  
15 **you have any defenders that are on call 24/7?**  
16 A. In what capacity?  
17 **Q. Any capacity.**  
18 A. Formally, no. Attorneys do work on  
19 weekends, but there's no in-call system for  
20 notifying lawyers.  
21 **Q. Okay. Has there ever been a situation**  
22 **where an attorney requested some discovery be**  
23 **performed and you said no for financial reasons?**  
24 A. No.  
25 **Q. Is there any situation where an**

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<p style="text-align: right;">Page 225</p> <p>1 attorney had requested an expert and you said no for 2 financial reasons?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And did an expert end up -- did 5 an expert of some kind end up getting retained or 6 utilized in that case?</p> <p>7 A. Yes.</p> <p>8 Q. And tell me a little bit about how that 9 process went to the best of your recollection.</p> <p>10 A. We wanted to do mitigation on a mental 11 health case. We wanted to hire a local psychiatrist 12 to prepare a mitigation report and treatment 13 alternatives and community placement.</p> <p>14 That request was denied. We were asked 15 to use a social worker. There are no social workers 16 who perform this function in the market in 17 St. Louis. We were referred to a social worker 18 based out of Springfield.</p> <p>19 She did a remote report. It was 20 inadequate and was essentially a waste of money, and 21 we should have hired the psychiatrist in the first 22 place.</p> <p>23 Q. Ah. In that situation it wasn't that 24 no expert was retained, it simply you just had to go 25 with a different expert, right?</p>	<p style="text-align: right;">Page 227</p> <p>1 Q. Okay. And do you have any knowledge 2 about that -- the state of that budget or is it 3 mostly just handled by the office manager?</p> <p>4 A. The amount of money is determined by 5 Woodrail and then we order supplies within that 6 budget.</p> <p>7 Q. Okay. But that's not something that 8 you like oversee really. I mean, you're in charge 9 but office manager kind of takes care of staying 10 within budget?</p> <p>11 A. I'm responsible for staying in budget. 12 The task of management of that budget is delegated 13 to the office management specialist. I have to sign 14 off on every expenditure.</p> <p>15 Q. Okay. And have you stayed within 16 budget for the years that you've been the district 17 defender?</p> <p>18 A. For office supplies, yes.</p> <p>19 Q. And just general like office equipment 20 and maintenance of the office, you know, outside of 21 the number of defenders, printers and office 22 supplies and just whatever other expenses, have you 23 ever exceeded your budget for those things while 24 you've been the district defender?</p> <p>25 A. The hardware is not determined by the</p>
<p style="text-align: right;">Page 226</p> <p>1 A. We were told to use a social worker 2 because it was less expensive than the expert that 3 we requested.</p> <p>4 Q. And so to answer my question, you 5 just -- you got a different expert than the one that 6 you initially requested, but you did get an expert, 7 correct?</p> <p>8 A. Different type of expert, correct.</p> <p>9 Q. Was there ever a situation where you 10 requested an expert and it was flat denied, no 11 expert ended up being appointed in a case?</p> <p>12 A. No.</p> <p>13 Q. Are there any other kind of like 14 financial requests that you would make for the 15 office, for example, like office supplies or things 16 of that nature, or is that done by some other 17 officer of the public defender?</p> <p>18 A. I'm not understanding the question.</p> <p>19 Q. So with like supplying your office, you 20 know, with office supplies and things like that, is 21 that something that you do or is that something that 22 somebody else does?</p> <p>23 A. There's a budget for office supplies 24 for the fiscal year and that's largely managed by 25 our office management specialist.</p>	<p style="text-align: right;">Page 228</p> <p>1 local office.</p> <p>2 Q. Okay. So that's a budget item that 3 would be dealt with at the state level?</p> <p>4 A. Correct.</p> <p>5 Q. But for everything else you've been 6 within budget; is that right?</p> <p>7 A. There is a number assigned to 8 deposition and expert witnesses. Where that number 9 comes from, I don't know, but it is usually exceeded 10 very -- within two or three months.</p> <p>11 Q. Okay.</p> <p>12 A. So you'd have to ask the state office 13 about that number and the actual resources --</p> <p>14 Q. Okay.</p> <p>15 A. -- available for depositions and 16 experts.</p> <p>17 Q. And so for -- as far as who sets that 18 budget for your office, is that done at the state 19 level?</p> <p>20 A. Yes.</p> <p>21 MR. MOORE: Okay. I think that's all 22 I've got.</p> <p>23 MS. SHIPMA: Okay. I have a few 24 questions.</p> <p>25 EXAMINATION</p>

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<p style="text-align: right;">Page 229</p> <p>1 QUESTIONS BY MS. SHIPMA:</p> <p>2 <b>Q. Stephen, in your opinion are</b></p> <p>3 <b>lower-level cases more easily resolved?</b></p> <p>4 A. In -- I don't understand the question.</p> <p>5 <b>Q. Does it take less work to bring a</b></p> <p>6 <b>lower-level case to completion than a higher-level</b></p> <p>7 <b>case?</b></p> <p>8 A. Yes.</p> <p>9 <b>Q. And the stakes are less for a client</b></p> <p>10 <b>typically in a lower-level felony than a</b></p> <p>11 <b>higher-level felony?</b></p> <p>12 A. In terms of imprisonment, yes. I think</p> <p>13 impact on a client's life is something that needs to</p> <p>14 be taken into consideration and can be significant</p> <p>15 in a low-level felony.</p> <p>16 <b>Q. Do you require your attorneys to</b></p> <p>17 <b>document the things that they haven't been able to</b></p> <p>18 <b>do in a case?</b></p> <p>19 A. No.</p> <p>20 <b>Q. Why not?</b></p> <p>21 A. They don't have enough time to take</p> <p>22 care of the cases and to do things on cases. That</p> <p>23 would be an administrative burden that does not</p> <p>24 address immediate client needs in the office.</p> <p>25 <b>Q. In your opinion, are there times when</b></p>	<p style="text-align: right;">Page 231</p> <p>1 <b>Q. (By Ms. Shipma) You testified earlier</b></p> <p>2 <b>about when an attorney wants an investigator to do</b></p> <p>3 <b>something they -- they simply do an action item to</b></p> <p>4 <b>the investigator; is that correct?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. And that action item I believe you've</b></p> <p>7 <b>stated is something that is a function in Lotus</b></p> <p>8 <b>Notes; is that correct?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. How would an attorney know that there</b></p> <p>11 <b>needed to be some investigation done in order to do</b></p> <p>12 <b>the action item?</b></p> <p>13 A. Consultation with a client and review</p> <p>14 of discovery.</p> <p>15 <b>Q. So it's not simply just pushing a</b></p> <p>16 <b>button on Lotus Note and filling out a form for an</b></p> <p>17 <b>action item?</b></p> <p>18 A. Correct. There's work that takes place</p> <p>19 before the investigation request is assigned to --</p> <p>20 to an investigator.</p> <p>21 <b>Q. Do you think that client contact every</b></p> <p>22 <b>60 days meets ethical standards?</b></p> <p>23 A. No.</p> <p>24 <b>Q. And I just want to clear up something I</b></p> <p>25 <b>think that a question was asked and you answered it</b></p>
<p style="text-align: right;">Page 230</p> <p>1 <b>attorneys may not even realize what they failed to</b></p> <p>2 <b>do on a case?</b></p> <p>3 MR. MOORE: I'll object to the form.</p> <p>4 That calls for speculation. Also object to</p> <p>5 foundation. You can respond.</p> <p>6 A. Yes. And I -- I have an example. I</p> <p>7 was on a case in a murder case and I'm being PCR'd</p> <p>8 for not obtaining AT&amp;T cell phone records, and that</p> <p>9 may have been something in the course of that case</p> <p>10 that at the time I was not aware of, and I -- the</p> <p>11 other case that's being PCR'd that I mentioned is</p> <p>12 witnesses.</p> <p>13 I think you may not be aware of</p> <p>14 witnesses and lawyers learn too late because they're</p> <p>15 not meeting with the client and the client is</p> <p>16 saying, hey, I need this witness contacted. By the</p> <p>17 time that conversation is taking place, the witness</p> <p>18 has disappeared.</p> <p>19 And it can also go with surveillance</p> <p>20 video, text messages are very hard to recover. A</p> <p>21 lot of these things that we're talking about it's</p> <p>22 very hard for lawyers to perceive what is important</p> <p>23 to the case unless they have enough time to really</p> <p>24 delve into it quickly and at the beginning of the</p> <p>25 case.</p>	<p style="text-align: right;">Page 232</p> <p>1 <b>without maybe listening to the way the question was</b></p> <p>2 <b>asked.</b></p> <p>3 MR. MOORE: I'll object to the form.</p> <p>4 That seems leading, but go ahead.</p> <p>5 <b>Q. (By Ms. Shipma) I believe that the</b></p> <p>6 <b>question was asked do the attorneys make psychiatric</b></p> <p>7 <b>evaluations. Now, if I ask you that question do</b></p> <p>8 <b>your attorneys make psychiatric evaluations, what's</b></p> <p>9 <b>your answer?</b></p> <p>10 A. No. My understanding of the question</p> <p>11 was do they investigate and hire appropriate people</p> <p>12 and collect records to conduct those investigations.</p> <p>13 <b>Q. Okay. Just wanted to make sure we</b></p> <p>14 <b>weren't having attorneys out there practicing</b></p> <p>15 <b>psychiatry.</b></p> <p>16 <b>And I believe you stated earlier that</b></p> <p>17 <b>you've had about -- that you've hired or replaced</b></p> <p>18 <b>about five to seven attorneys this year?</b></p> <p>19 A. Yes.</p> <p>20 <b>Q. Is that calendar year?</b></p> <p>21 A. I am speaking roughly from November,</p> <p>22 December last year to now.</p> <p>23 MS. SHIPMA: That's all I have.</p> <p>24 MR. MOORE: Couple, but do you want to</p> <p>25 circle back around first?</p>

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<p style="text-align: right;">Page 233</p> <p>1 MS. ROSCA: No, I don't have any.  2 FURTHER EXAMINATION  3 QUESTIONS BY MR. MOORE:  4 Q. Okay. Just tying up loose ends here.  5 Did you when you were in private practice bill your  6 time?  7 A. It depended on the case.  8 Q. Okay. And when you did bill your time  9 on those cases, would it be tenths of an hour if you  10 recall?  11 A. Yeah, it was -- it was either five or  12 ten-minute increments.  13 Q. Okay. Do you know whether it's typical  14 for attorneys to bill their time in private  15 practice?  16 A. The state of private practice right now  17 may be considerably different than the state of  18 private practice before 2007 and the recession, and  19 business models may have changed.  20 Q. Fair enough. At the time to your  21 knowledge whenever you were in private practice was  22 it typical for attorneys to bill their time?  23 A. In our practice we were a general  24 practice. We had a diverse practice. And some  25 cases we would bill. Other cases we would do flat</p>	<p style="text-align: right;">Page 235</p> <p>1 A. No.  2 Q. We discussed a few times how attorneys  3 that you've referenced have failed to investigate or  4 made other mistakes in the course of working up  5 their cases, right?  6 A. Right.  7 Q. And you have mostly attributed those  8 mistakes or omissions to the caseload they're  9 working under, right?  10 A. Yes.  11 Q. But isn't it true that attorneys and  12 people generally, they make mistakes, right?  13 A. Yes.  14 Q. And so it can be kind of difficult to  15 determine or distinguish between a mistake an  16 attorney makes that's just a regular mistake or a  17 mistake that's made because of caseload. Would you  18 agree?  19 A. Not necessarily.  20 Q. Okay. And so how would you be able to  21 distinguish just a normal omission versus an  22 omission caused by -- caused by caseload?  23 A. I mean, I think both occur.  24 Q. So how could you distinguish?  25 A. You look into the circumstances and you</p>
<p style="text-align: right;">Page 234</p> <p>1 fees.  2 Q. Okay.  3 A. In other cases we would do retainers,  4 meaning a percentage at the end of the conclusion of  5 the case depending upon the -- the award, whatever  6 was determined.  7 Q. Okay. Fair enough. Have you ever been  8 adjudicated to have rendered an ineffective  9 assistance of counsel?  10 A. Yes.  11 Q. You have been?  12 A. Yes.  13 Q. When was that?  14 A. Last year.  15 Q. Was there a case number associated with  16 that?  17 A. It's a Eastern District of Missouri  18 federal court case. It's a death penalty case.  19 It's Carman Deck versus whoever is the  20 superintendent of the Department of Corrections.  21 Q. Okay. And you don't recall like a case  22 number or anything, do you?  23 A. No. No.  24 Q. Okay. Other than that instance, any  25 other instances?</p>	<p style="text-align: right;">Page 236</p> <p>1 make decisions and judgment calls.  2 Q. So it would be kind of just a judgment  3 call as far as teasing out whether it was caused by  4 caseload or caused by just general human error,  5 right?  6 A. There would be an analysis, yes.  7 Q. Okay. But in the cases you reference,  8 you believe that it was caused by caseload, right?  9 A. Yes.  10 Q. And in your mind is it possible that  11 any of those could have been caused by just normal  12 human error?  13 A. It's always possible.  14 MR. MOORE: That is all that I have.  15 MS. ROSCA: That's all I have.  16 VIDEOGRAPHER: The time is 7:03. We  17 are off the record. This concludes the deposition  18 of Stephen Reynolds.  19 (WHEREIN, the deposition was concluded  20 at 7:03 p.m.)  21  22  23  24  25</p>

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## 1 CERTIFICATE OF REPORTER

2  
3 I, William L. DeVries, a Certified  
4 Court Reporter (MO), Certified Shorthand Reporter  
5 (IL), Registered Diplomate Reporter, and a Certified  
6 Realtime Reporter, do hereby certify that the  
7 witness whose testimony appears in the foregoing  
8 deposition was duly sworn by me pursuant to Section  
9 492.010 RSMo; that the testimony of said witness was  
10 taken by me to the best of my ability and thereafter  
11 reduced to typewriting under my direction; that I am  
12 neither counsel for, related to, nor employed by any  
13 of the parties to the action in which this  
14 deposition was taken, and further that I am not a  
15 relative or employee of any attorney or counsel  
16 employed by the parties thereto, nor financially or  
17 otherwise interested in the outcome of the action.

18  
19  
20  
21 \_\_\_\_\_  
22 Certified Court Reporter  
23 within and for the State of Missouri  
24  
25

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## 1 WITNESS ERRATA SHEET

2 Witness Name: STEPHEN P. REYNOLDS  
3 Case Name: SHONDEL CHURCH, et al. vs. STATE OF  
MISSOURI, et al.

4 Date Taken: DECEMBER 19, 2017

5  
6 Page # \_\_\_\_\_ Line # \_\_\_\_\_

7 Should Read: \_\_\_\_\_

8 Reason for Change: \_\_\_\_\_

9  
10 Page # \_\_\_\_\_ Line # \_\_\_\_\_

11 Should Read: \_\_\_\_\_

12 Reason for Change: \_\_\_\_\_

13 Page # \_\_\_\_\_ Line # \_\_\_\_\_

14 Should Read: \_\_\_\_\_

15 Reason for Change: \_\_\_\_\_

16  
17 Page # \_\_\_\_\_ Line # \_\_\_\_\_

18 Should Read: \_\_\_\_\_

19 Reason for Change: \_\_\_\_\_

20 Page # \_\_\_\_\_ Line # \_\_\_\_\_

21 Should Read: \_\_\_\_\_

22 Reason for Change: \_\_\_\_\_

23  
24  
25

Witness Signature: \_\_\_\_\_

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1 Alaris Litigation Services  
2 (314) 644-2191

3 December 26, 2017  
4 Ms. Jacqueline Shipma  
Missouri State Public Defender  
5 1000 West Nifong  
Building 7, Suite 100  
6 Columbia, Missouri 65203  
(573) 525-5212  
7 jacqueline.shipma@mspd.mo.gov  
8 In Re: SHONDEL CHURCH, et al. vs. STATE OF  
MISSOURI, et al.

9 Dear Ms. Shipma:

10 Please find enclosed your copy of the deposition of  
11 STEPHEN P. REYNOLDS taken on December 19, 2017 in  
the above-referenced case. Also enclosed is the  
12 original signature page and errata sheets.  
13 Please have the witness read your copy of the  
transcript, indicate any changes and/or corrections  
14 desired on the errata sheets, and sign the signature  
page before a notary public.

15 Please return the errata sheets and notarized  
16 signature page to Alaris Litigation Services, 711  
North Eleventh Street, St. Louis, Missouri 63101  
17 within 30 days of receipt.

18 Thank you for your attention to this matter.

19 Sincerely,

20  
21 William L. DeVries, CCR(MO)/CSR(IL)/RDR/CRR  
22 Enclosures  
23  
24  
25

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1 STATE OF )  
2 )  
3 COUNTY OF )

4 I, STEPHEN P. REYNOLDS, do hereby certify:  
5 That I have read the foregoing deposition;  
6 That I have made such changes in form and/or  
substance to the within deposition as might be  
7 necessary to render the same true and correct;  
8 That having made such changes thereon, I  
hereby subscribe my name to the deposition.  
9 I declare under penalty of perjury that the  
foregoing is true and correct.

10 STEPHEN P. REYNOLDS

11 Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
12 20\_\_\_\_, at \_\_\_\_\_.

13  
14  
15 Notary Public:  
16 My Commission Expires:  
17  
18  
19  
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21  
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24  
25

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## ALARIS LITIGATION SERVICES

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